EXCERPTS FROM
[Pages 92-104]

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CEMEX, INC., a Louisiana Corporation,
Plaintiff,

v.

COUNTY OF LOS ANGELES, and
DOES 1 through 10, inclusive,
Defendants.

Case No. CV-02-747 DT (FMOx)

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, WRIT OF MANDATE, AND DAMAGES

* * * *

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FIRST CLAIM FOR RELIEF

(For Declaratory and Injunctive Relief – Federal Preemption of the Los Angeles County Surface Mining and Reclamation Approval Process as Exercised with Respect to CEMEX's Approved Federal Project)

185. Plaintiff refers to and incorporates herein by reference each and every allegation contained in paragraphs 1 through 184, above.

186. The United States' sale of Federal sand and gravel resources at Soledad Canyon to CEMEX was conducted pursuant to a lawful congressional delegation of authority to the Department of the Interior. The decision of the BLM to dispose of these sand and gravel resources was a Federal land-use decision that reflected a careful balancing of competing interests by the BLM. The Federal Contracts were awarded to Plaintiff by the BLM in 1990, pursuant to the Materials Act of 1947, 30 U.S.C. § 601 *et seq*. The Contract quantities and other specifications, such as the time period which the successful bidder has to remove the Contract quantities, have the force of Federal law. The Federal government continues to have an interest in the resources.

187. Plaintiff has pursued a Federal process to obtain review and approval from the BLM of its plan of mining operations to implement the Federal Contracts. In accordance with Federal requirements, Plaintiff submitted mining and reclamation plans to the BLM in May 1991. On August 1, 2000, following a decade of environmental review and exhaustive input from Federal, state, and local agencies, the BLM published its ROD, approving CEMEX's proposed plan of mining operations subject to the adoption of specific mitigation measures. This ROD, and all related environmental review, was affirmed by the IBLA on January 8, 2002.

188. CEMEX first submitted its application for a surface mining permit and reclamation plan to the County of Los Angeles in May 1991, more than ten years ago, but the County still has not approved Plaintiff's application or issued a permit or reclamation plan. Instead, the County Regional

Planning Commission denied the Project in 2000, and the Board twice announced its intent to deny Plaintiff's appeal, before adopting findings and an order of denial on April 23, 2002. This is the case, notwithstanding the United States' ownership and reservation of the mineral resources pursuant to the Stock-Raising Homestead Act, the United States' Notice of Sand and Gravel Sale and public competitive bid process for the right to mine its mineral resources, the award of the Federal Contracts to CEMEX, decisions of this Court and the Ninth Circuit upholding the bid process and award of the Federal Contracts, the United States' $28 million royalty interest in the Federal Contracts, subsequent litigation in this Court affirming the dominance of the Federal mineral estate (again upheld, albeit on other grounds, by the Ninth Circuit), a ten-year Federal environmental review process pursuant to the National Environmental Policy Act, two Biological Assessments under the Federal Endangered Species Act and two Biological Opinions by the U.S. Fish and Wildlife Service, a Final Environmental Impact Statement (following extensive analysis and public comment), the BLM's issuance of its ROD approving CEMEX's proposed Project pursuant to the Federal Contracts, and the IBLA's affirmance of the ROD. This is also the case, notwithstanding the State of California, State Mining and Geology Board's longstanding designation of the Project Site as a "Regionally Significant Construction Aggregate Resource Area," which designation the County accepted.

189. Notwithstanding that controlling Federal land-use decisions as to these Federal resources have been made, County officials have engaged in a demonstrable pattern of obstructive conduct aimed at fatally delaying and/or denying Plaintiff's application and prohibiting this Federally-Approved Project, through interminable and unjustified delays and continuances at virtually every step of the process, through the

proposed imposition of Project conditions and mitigations that are not consistent with the Federal land-use decision-making and/or have no rational nexus to any legitimate environmental objective, and most recently by announcing its intent to deny the Project on specious grounds and then adopting findings and an order to deny the Project.

190. Although Plaintiff's permit and reclamation application was submitted to the County of Los Angeles in May 1991, the County Planning Staff did not complete the Draft EIR until February 1999, and the Regional Planning Commission did not reach any decision until December 1999, after a half a dozen continuances (and did not issue any findings until February 16, 2000), at which point the Planning Commission categorically denied the Project without so much as mentioning the Federal Contracts or the Federal environmental review process in its findings. Moreover, these findings conflicted with prior recommendations of the Planning Commission's own staff, which was recommending approval of the same Project as was approved by the Federal BLM in the ROD. During this stage of the County process, public comment periods were repeatedly, inexplicably, and unjustifiably re-opened and extended, while numerous hearings on Plaintiff's application were unfairly postponed.

191. Plaintiff lodged its appeal of the planning Commission's denial of its permit application with the Board of Supervisors of the County more than two years ago, on March 13, 2000. As at prior stages of the County's permit application process, periods for public comment on Plaintiff's Project were repeatedly, unjustifiably and unreasonably extended by the Board, hearings were unfairly continued – another half dozen times – and conditions were considered and proposed that were in direct conflict with existing Federal requirements. Indeed, the County's Draft Conditions and

Revised Draft Conditions, publicly distributed in April and November 2001, recommend many requirements that conflict with the ROD, and many that lack any rational relation to legitimate environmental objectives. At the public hearing of April 24, 2001, the Board of Supervisors indicated its "intent to deny" the Project, notwithstanding that it had no authority to outright prohibit a Federally-approved mining project on Federal lands. Moreover, during this hearing, the Board instructed County Planning Staff to analyze a host of Project conditions demanded by Project opponents, notwithstanding the fact that many of these conditions conflicted with the Federal Contracts and the ROD. Then, at the public hearing of November 27, 2001, County Supervisors abandoned their pre-announced agenda in order to raise traffic issues about CEMEX's Project that had been resolved years earlier and which would again bring the County conditions into direct conflict with the requirements of the Federal Contracts and the ROD.

192. The Board of Supervisors' excuse for postponing a vote on Plaintiff's Project at the November 27, 2001 hearing came after an eleventh-hour "discovery" by the County's Department of Public Works of previously unidentified traffic concerns that had been "brought to [their] attention" by Fifth District Supervisor Antonovich, "working behind the scenes." Yet these vaguely described traffic issues were resolved to the DPW's satisfaction over the course of three departmental reviews (in 1995, 1998, and 2000), a formal written response by the DPW (in June 2001) containing no hint that it might consider the EIR to be inadequate with respect to traffic, and three years of silence or non-objection by the DPW (including the Traffic and Lighting Division) to the traffic analysis for the Project. DPW had also previously reconfirmed the adequacy of the existing EIR analysis, including PCE ratios. DPW had also previously concluded that one of the mitigation measures

discussed on November 27, 2001 – the widening of Soledad Canyon Road – was infeasible. Other possible areas of further analysis suggested on November 27 – e.g., rail-haul, and reducing the size of the Project – had been rejected by the Federal government and were and are not consistent with the Federal Contracts and the ROD. Supervisor Antonovich also seized upon the Soledad Canyon Road questions he had brought to DPW's attention "behind the scenes," by suggesting there might be some infirmity with respect to the 14 Antelope Valley Freeway impact analysis, even though the proposed Final EIR had concluded that the Project would have no significant impacts there, and DPW had voiced no concerns as to the 14 Antelope Valley Freeway.

193. Concomitant with imposing the multitude of delays described above, in the course of reviewing Plaintiff's Project the County of Los Angeles had, during those delays, consistently subjected the Project to a series of shifting and novel environmental review standards and criteria for approval, which were focused not on achieving "reasonable environmental regulation," but rather on creating even further delays and otherwise frustrating the approved Federal Project. For example, during its January 23, 2001 hearing, the Board of Supervisors required CEMEX to negotiate with the City of Santa Clarita and other Project opponents as a prerequisite to the Board rendering a final decision in April. When the parties completed that process and returned to the Board on April 24, 2001, with a publicly distributed proposed Final EIR ready for certification, the Board refused to certify the EIR, refused to render a final decision on CEMEX's appeal, continued the hearing, incorporated the CEMEX-proposed compromise conditions into the Project, and then, using the CEMEX conditions as a starting point, initiated a new process in which it directed that *all* of the conditions proposed by Project opponents be addressed in a future proceeding. At the next

hearings, when it ultimately occurred in November, that new process begun in April had been completed by Planning Staff and included in its November Staff Report analyzing all Project opponent conditions. Even though CEMEX had been led to believe the Board would address the merits of the Project and certify the Final EIR (which, again, had been publicly distributed), the Board created yet another new process impediment by questioning whether the traffic analysis adopted by the County of Los Angeles for several years was in error, thereby conjuring yet another basis for a continuance.

194. All of these process delays at the County occurred in the context of Project opponents (and CEMEX's business competitor Curtis) having vowed to use political influence to delay the County permit approval process, Fifth District Supervisor Antonovich "whip[ping] up" crowds in opposition to the Project and encouraging them to "build a case," Supervisor Antonovich's former field representative and then City of Santa Clarita Mayor Darcy saying "[we] will do anything necessary to stop this project," local opposition to *any* mining project on the Site (irrespective of prior Federal land-use decisions and Federal law), a coordinated opposition by Supervisor Antonovich and other Project opponents in the Federal permitting and appeals process, criticism by Supervisor Antonovich of uniform County traffic analysis standards as "wrong" or "nonsense," a $1.2 million public relations campaign meant to kill the Project (replete with half-truths and hyperbole, admittedly intended to be inflammatory), two unsuccessful efforts by a U.S. Congressman to introduce legislation to kill the Project at the urging of local constituents, an unsuccessful attempt by the U.S. Congressman (at the request of a business competitor of CEMEX) to challenge the Federal Contract bid award through the Department of Interior, Office of Inspector General, repeated motions for continuances by Supervisor Antonovich

and/or his local constituents, and more.

195. This process of obstructive delay neared its climax with the hearing of February 26, 2002 when the Board of Supervisors approved another motion indicating their intent to deny CEMEX's appeal, having the effect of prohibiting the Project altogether. This motion was adopted after CEMEX had recently paid $40,000 in environmental review fees to the County, DPW had completed a traffic analysis as presented in the February DPW Report, DPW testified at the hearing that the conditions agreed to by CEMEX would address DPW's concerns over the need for impact mitigation, and CEMEX is within its rights to seek recourse from the Courts to stop the endless delays imposed on it.

196. Supervisor Antonovich brought the February 26, 2002 motion for the Board to deny the Project on account of CEMEX's alleged "refusal to cooperate," supposedly evidenced by, among other things, CEMEX's filing of the present lawsuit to preserve its rights. The motion was passed by the Board of Supervisors despite the fact that the County could have either certified the existing EIR and approved the Project, or the County could have completed and circulated a revised EIR (especially given that DPW already had completed a supplemental traffic analysis), since it was the County's statutory obligation to complete and certify the EIR. Moreover, County Counsel specifically instructed the Supervisors that this was an option. There was no reason at all for the County to deny the Project at the hearing since CEMEX had agreed to new traffic mitigations which met DPW's concerns and CEMEX had provided further evidence that the existing EIR was adequate for certification. By pursuing this procedural stratagem, the County thus avoided or forestalled any decision on the substantive merits of CEMEX's Federally-approved Project, and instead delayed

that decision further and bought itself some more time to create even further delays.

197. The County followed its inappropriate February 26, 2002 vote of intent to deny with its April 23, 2002 adoption of findings and an order to deny the Project. In so doing, the Board instructed Counsel to prepare, and then adopted, without public discussion, findings that go far beyond the traffic analysis and CEQA procedural issues which had been the subject of its hearings and the basis of its decision-making over the previous five months. The Board thus denied CEMEX the opportunity to be heard as to substantive matters made part of the findings.

198. The decade-long County process culminating in a procedurally-based denial of CEMEX's permit application has frustrated and threatens to further impair and frustrate the implementation of an important Federal land-use decision. The attempt by the County of Los Angeles to subvert the limited albeit legitimate purpose of the local review and approval process into a never ending delay and then denial of a Federally-approved Project constitutes a form of prohibition of the Project. In particular, this abuse of the County's permitting and reclamation process has imposed additional costs, uncertainties and delays on the Project sufficient to jeopardize the implementation of the Federal land-use decisions determined in the Federal Contracts and the ROD. Such a *de facto or de jure* prohibition is contrary to law and places the County's permit and reclamation plan approval process itself, as applied to Plaintiff CEMEX's permit and reclamation plan application, in conflict with Federal land-use determinations. The County's permit and reclamation plan approval process, as actually applied to CEMEX's surface mining permit and reclamation plan application, has consequently become a direct obstacle to the accomplishment

of the full purposes and objectives of Congress in the Materials Act of 1947. Opponents of the Project have used and, if the application is remanded to the County, will continue to use, the local permitting process as a means of thwarting the authority of the BLM to dispose of mineral material resources, thereby defying Congressional intent in enacting the Materials Act of 1947. The current and any further process of the County for the approval of CEMEX's application for a surface mining permit and reclamation plan is therefore preempted by the Materials Act of 1947, the Federal Contracts, and the ROD, pursuant to the Property and Supremacy Clauses of the U.S. Constitution.

199. The County's *de facto* prohibition of the Project through years of delays, the continued consideration of conditions that would frustrate Federal requirements, and an interminable environmental review and hearing process, including its recent *de jure* prohibition through the Supervisors' announced intent and adopted order to deny the Project, has created adversity to Plaintiff's interests. An actual and justifiable controversy has therefore arisen and now exists between Plaintiff and Defendant concerning their rights and other legal relations with respect to the implementation of the Federal Contracts and the ROD, for which there is no adequate remedy at law. The County of Los Angeles continues to act as though it can delay this Project indefinitely and impose conditions inconsistent with the Federal Contracts and the ROD and, after the filing of this lawsuit, has seized upon specious pretexts toward denial of the Project, before purporting to deny the Federally-approved Project altogether. Plaintiff believes that the County cannot so act to frustrate Federal intent, and Plaintiff will be irreparably harmed if the County process is allowed to proceed further.

220. Plaintiff CEMEX therefore requests declaratory

and injunctive relief, as set forth in the Prayer for Relief below.

SECOND CLAIM FOR RELIEF
(For Declaratory and Injunctive Relief – Federal Preemption of County Actions and Conditions Inconsistent with Approved Federal Project)

201. Plaintiff refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 200, above.

202. In its ROD, the BLM approved Plaintiff's mining and reclamation plan of operations for the Project with mitigation measures regarding traffic, air quality, cultural resources, visual qualities, noise, water quality, water resources, geotechnical considerations and public health. The BLM also considered and eliminated a variety of alternatives, such as rail-haul (transporting aggregate and other material by rail instead of truck) and the mining of reduced quantities of sand and gravel. The BLM-approved Project was subsequently affirmed by the IBLA. The BLM's findings, elimination of alternatives, approval of Plaintiff's mining plan, including quantities of mining to allow implementation of the Federal Contracts, and required mitigation measures, as set forth in the Federal Contracts and the ROD, have the force of Federal law. Once the BLM has approved a permittee's plan of operations, as Plaintiff's plan has been approved, Federal regulations require that the permittee not deviate from this approved plan.

203. At its public hearings, in its written communications with Plaintiff, and in its proposed Draft Conditions and Revised Draft Conditions presented in April and November 2001, the County of Los Angeles considered, proposed, and circulated various conditions for the approval of Plaintiff's

application for a surface mining permit and reclamation plan which conflict with, are inconsistent with, or would frustrate the requirements of the Federal Contracts and the ROD. Because these conditions are neither reasonable environmental regulations nor consistent with existing Federal requirements, they would be preempted by Federal law if imposed. In its consideration of Plaintiff's application for a surface mining permit and reclamation plan, the County has given consideration to conditions that conflict with the ROD, the Federal Contracts, and the Materials Act of 1947, or that would frustrate the purposes of the Materials Act, and the BLM's mandate under Federal law including but not limited to the following:

- Operating Hours/Truck Ban or Limit During Business Hours: This condition, as described in paragraph 124, would negatively affect CEMEX's ability to compete in the marketplace, thereby rendering the Project infeasible, and thus frustrating the ROD and the Federal Contracts.

- Production Restriction: This condition, as described in paragraph 124, would directly conflict with the Federal Contracts' timing provisions, which allow mining under Phase 1 in less than or up to 10 years, in conformance with the BLM Mineral Material Sales Regulations. This restriction would also restrict the Federal government's ability to sell additional minerals it owns in the Project area by prolonging the duration of CEMEX's mining Project, thereby frustrating the Federal government's future interests to develop the public resources at the Site.

- Project Oversight (Monitor): This condition, as

described in paragraph 124, would establish an unnecessary and inappropriate precedent for future BLM mineral contracts, and given the enormous cost, would frustrate and interfere with future BLM bidding for Contracts, thereby potentially restricting or diminishing Federal royalty revenues.

- Reporting Requirements: This condition, as described in paragraph 124, would impose an unworkable regulatory scheme which would frustrate and conflict with the Project and serve to disclose proprietary information to business competitors and other parties, and would conflict with the Federal regulation of mining by establishing an inappropriate precedent for future Federal mineral resource contracts. The proposed reporting requirements relating to water resources, biological resources, air quality and cultural resources require reporting that far exceeds that provided for in the ROD and required under Federal law, thus leading to potential conflict with the Federal requirements.

- Exhaust Particulate Filter Truck Retrofit: As described in paragraph 124, this condition would require CEMEX, alone, to implement filters on its trucks that the County's own Staff acknowledges have not been required of any other project, and that conflict with applicable Federal and state standards.

- Cultural Resource: As described in paragraph 124, this condition exceeds Federal standards, is unrelated to environmental mitigation, and would force CEMEX to notify Project opponents currently in litigation against the Project of any discovery of cultural resources within 24 hours of such a discovery.

- Rail-haul: As described in paragraph 124, this condition would require the Federal government, in theory, to prepare a new biological assessment, new biological opinion, new EIS, and new ROD. However, it is questionable whether a non-jeopardy biological opinion could be obtained for a rail-haul project. Thus, the imposition of rail-haul would make it impossible for CEMEX to comply with the approval set forth in the existing ROD. Moreover, County Planning Staff did not recommend requiring rail-haul because, among other things, it was not part of the Project before the Board and because it would result in greater environmental impacts.

- Imported Water: As described in paragraph 124, this condition would conflict with the ROD which specifically analyzed the importation of water for the Project and rejected this alternative. Moreover, this condition, even if feasible, would result in severe financial costs to CEMEX, which would limit the feasibility of the Project, thereby impacting the payment of royalties to the BLM under the Contracts.

- No Ridgeline Reduction: As described in paragraph 124, this condition would conflict with the 56.1 million tons of production approved in the ROD and the Federal Contracts. Moreover, the BLM considered and rejected a "Reduced Quantity Mining Concept Alternative" in the ROD. Finally, restrictions on Project mining would result in adverse precedent for future Federal competitive sales and contracts, thereby impacting the efficacy of the competitive bidding process under the Materials Act of 1947.

- School Air Conditioning Retrofitting: As described in paragraph 124, this condition, which would result in virtually no benefit to the community, would require enormous financial expenditures that would severely affect the implementation of the Contracts and the payment of royalties to the BLM. Thus, this condition would frustrate the Federal decisions involved, as well as the Congressional intent as manifested in the Materials Act of 1947.

204. After imposing months of delays to analyze and debate these violative conditions, and then reviewing CEMEX's lawsuit filed on January 25, 2002, cataloging the numerous examples of County action inconsistent with Federal law, the Board avoided reaching a substantive determination on these proposed conditions and instead, on February 26, 2002, announced for a second time its intent to deny CEMEX's appeal of the permit application denied by the Regional Planning Commission, even though it was clear under existing law that the County could not, and cannot, block this Federally-approved Project. The second intent to deny was based on the specious grounds that CEMEX had refused to cooperate because it disagreed that a new study of the traffic issue (which DPW had in fact completed) was needed, it opposed re-circulation of the EIR, and it had filed this lawsuit to enforce its rights. The County's frustration of the Federally-approved Project on these pretexts provides yet another example of the County's deliberately acting in a manner inconsistent with Federal requirements.

205. Still later, on April 23, 2002, the Board went a step further in defying Federal law and the Federal Contracts, by adopting findings and an order to deny the Project, notwithstanding the BLM's Record of Decision and the IBLA's Order upholding that ROD. The County thus brought

to a close this chapter of its dilatory process, but not before instructing its Counsel to prepare findings to justify the Board's decision on grounds that it did not discuss or hear. Furthermore, the County made clear that it was denying the Project "as currently presented"; in other words, the County anticipates that any further County administrative process will include further consideration of the above-described conditions, notwithstanding that they would conflict with and interfere with the Federally-approved Project.

206. The County's repeated and continued consideration and circulation of proposed conditions inconsistent with Federal requirements as conditions for approval of Plaintiff CEMEX's application for a surface mining permit and reclamation plan, followed by its intended prohibition of the Federally-approved Project, and order of denial, have created adversity between Plaintiff and Defendant. An actual and justiciable controversy has therefore arisen and now exists between Plaintiff and Defendant concerning their rights and other legal relations with respect to the implementation of the Federal Contracts and the ROD, for which there is no adequate remedy at law. Plaintiff will suffer irreparable harm if Defendants are allowed to impose conditions on the Project that are inconsistent with existing Federal conditions, or to fail to act in a timely manner to approve a Project consistent with the Federal land-use planning and decisions embodied in the ROD, or to deny the Project outright.

207. Plaintiff CEMEX accordingly seeks declaratory relief and injunctive relief, as set forth in the Prayer for Relief below.

APPENDIX G

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FILING FEE EXEMPT
GOV'T CODE § 6103

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CEMEX, INC., a Louisiana Corporation,
Plaintiff,

v.

COUNTY OF LOS ANGELES, and
DOES 1 THROUGH 10, INCLUSIVE
Defendants.

UNITED STATES OF AMERICA,
Plaintiff-in-Intervention.

City of Santa Clarita,
Defendant-in-Intervention.

Case No. 0200747 DT (FMOx)

Judge Dickran Tevrizian
Courtroom 880

ANSWER OF THE CITY OF SANTA CLARITA TO SECOND AMENDED COMPLAINT OF CEMEX

Date: TBD
Time: 10:00 a.m.
Dept: 880

Complaint Filed: 01/25/02

First Amended
Complaint Filed: 04/11/02

Second Amended
Complaint Filed: 05/09/02

Trial Date: None set

COMES NOW the City of Santa Clarita ("City"), by and through its undersigned attorneys, and pursuant to Fed.R.Civ.P. 24(c), sets forth its claims and defenses to CEMEX, Inc.'s Second Amended Complaint for Declaratory and Injunctive Relief, Writ of Mandate, and Damages.

INTRODUCTION

1. The allegations set forth in paragraph 1 are denied.

2. The allegations set forth in paragraph 2 are denied.

3. The allegations set forth in paragraph 3 are denied.

4. With regard to the allegations set forth in paragraph 4, the City admits that members of the Los Angeles County

Board of Supervisors ("LABOS") have continued to advance feasible alternatives and mitigation measures, including the "rail-haul" alternative and a reduction in quantity of sand and gravel to be mined. The City also admits that members of the LABOS have moved to deny the Soledad Canyon Sand and Gravel Project ("Soledad Canyon Project") outright. The City denies, however, any and all allegations set forth in paragraph 4 that the above-described actions of members of the LABOS are inappropriate, illegal, or exceed County authority over the Soledad Canyon Project.

5. The allegations set forth in paragraph 5 are denied.

6. The allegations set forth in paragraph 6 are denied.

7. With regard to the allegations set forth in paragraph 7, the City admits that on February 26, 2002 the LABOS voted its intent to deny CEMEX' surface mining permit application. The reasons for the denial are set forth in the LABOS April 18, 2002 Findings. All remaining allegations in paragraph 7 are denied.

JURISDICTION AND VENUE

8. The allegations set forth in paragraph 8, insofar as they assert that the County, and other unnamed defendants, have violated the rights of CEMEX, are denied.

9. The allegations set forth in paragraph 9, insofar as they assert that this Court has jurisdiction to hear CEMEX's claims, are denied.

10. The allegations set forth in paragraph 10, insofar as they assert that this Court has jurisdiction to hear CEMEX's claims, are denied.

11. With regard to paragraph 11, the City admits that the County acts under the color of law when reviewing an application for a surface mining permit.

12. The allegations set forth in paragraph 12 are denied.

13. With regard to paragraph 13, the City admits that the Soledad Canyon Project site is in the Central District of California. The City denies any and all allegations set forth in paragraph 13 insofar as they assert that this Court has jurisdiction hear CEMEX's claims.

14. The allegations set forth in paragraph 14 are denied.

THE PARTIES

15. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 15.

16. With regard to paragraph 16, the City admits that the County is public body and a subdivision of the State of California, and that the County can be subjected to suit. The City denies, however, any and all allegations set forth in paragraph 16 insofar as they assert that this Court has jurisdiction to hear CEMEX's claims.

17. With regard to paragraph 17, the City admits that the County can be a "lead agency" for review and approval of surface mining permits.

18. With regard to paragraph 18, the City admits that the County can act as a "lead agency" under the California Environmental Quality Act ("CEQA").

19. The allegations set forth in paragraph 19, insofar as they assert that other unnamed defendants have violated the rights of CEMEX, are denied.

20. The allegations set forth in paragraph 20 are denied.

STATEMENT OF FACTS

21. With regard to paragraph 21, the City asserts that the federal laws and regulations set forth therein speak for themselves. The City denies that the surface estate is held in private ownership as the City purchased the fee ownership of the site in February of 2004. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 21.

22. With regard to paragraph 22, the City asserts that the Supreme Court decision cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of the other allegations set forth in paragraph 22.

23. With regard to paragraph 23, the City asserts that the United States District Court case cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of the other allegations set forth in paragraph 23.

24. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 24.

25. With regard to paragraph 25, the City asserts that the California State Mining and Geology Board Guidelines for Classification and Designation of Mineral Lands, California

Surface Mining and Reclamation Policies and Procedures speaks for itself. The City denies all the allegations set forth in paragraph 25 insofar as they assert that the opposition to the Soledad Canyon Project is a land use conflict or that opponents of the Project claim mining is incompatible with the area.

26. With regard to paragraph 26, the City asserts that the letter written by JoAnn Darcy speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 26.

27. With regard to paragraph 27, the City asserts that the Stipulation for Compromise Settlement cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 27.

28. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 28.

29. With regard to paragraph 29, the City asserts that the 1989 Environmental Assessment cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 29.

30. The City admits that CEMEX, formerly TMC, was the successful bidder for the federal contract to mine sand and gravel from Soledad Canyon. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 30.

31. With regard to paragraph 31, the City asserts that the

two federal contracts cited therein speak for themselves.

32. With regard to paragraph 32, the City asserts that the United States District Court and Ninth Circuit Court of Appeals cases speak for themselves. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 32.

33. With regard to paragraph 33, the City asserts that the United States District Court decision cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 33.

34. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 34.

35. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 35.

36. With regard to paragraph 36, the City asserts that the November 14, 1997 Statement of Uncontroverted Facts and Conclusions of Law cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 36.

37. With regard to paragraph 37, the City asserts that the December 3, 2000, news article appearing in the Newhall Signal speaks for itself. The City denies, however, any and all allegations set forth in paragraph 36 insofar as they assert that the City acted inappropriately and illegally, or has attempted to unduly influence decisions made by the County.

38. The allegations set forth in paragraph 38, insofar as they assert that the City's opposition to the Soledad Canyon Project was for any reason other than the Project's impact to the environment, are denied.

39. With regard to paragraph 39, the City admits that CEMEX submitted a proposed mining and reclamation plan to the BLM sometime in 1990.

40. With regard to paragraph 40, the City admits that the BLM issued a Notice of Intent to prepare a Draft Environmental Impact Statement ("DEIS") in 1995. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 40.

41. With regard to paragraph 41, the City admits that the BLM released a Final Biological Assessment in June 1996, which analyzed the Soledad Canyon Project's impact on the unarmored threespine stickleback. The City also admits that the BLM initiated formal consultation with the United States Fish & Wildlife Service ("FWS") to analyze the Project's impact on the stickleback. The City denies, however, any allegations set forth in paragraph 41 insofar as they assert that the BLM's evaluation of the Soledad Canyon Project's impact on endangered and threatened species was adequate and in compliance with applicable law.

42. With regard to paragraph 42, the City admits that the FWS released a Biological Opinion evaluating the Soledad Canyon Project's impact on the unarmored threespine stickleback on January 14, 1998. The City also admits that the 1998 Biological Opinion concluded that the Soledad Canyon Project would not jeopardize the continued existence of the stickleback. The City denies, however, all allegations set forth in paragraph 42 insofar as they assert that the FWS'

evaluation of the Soledad Canyon Project's impact on endangered or threatened species was adequate and in compliance with applicable law.

43. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 43.

44. With regard to paragraph 44, the City admits that the BLM completed the DEIS in May 1999. The City denies, however, all allegations set forth in paragraph 44 insofar as they assert that the BLM's evaluation of the Soledad Canyon Project's impact on the environment was adequate and in compliance with applicable law.

45. With regard to paragraph 45, the City admits that two public hearings were held by the BLM on June 2, 1999. The City also admits that the comment period for the DEIS was extended by the BLM. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 45.

46. With regard to paragraph 46, the City admits that the BLM prepared a supplement to the DEIS ("SDEIS"), which identified the Reduced North Fines Storage Area Alternative ("RNFSA") as the agency's preferred alternative. The City also admits that the SDEIS was subject to a two-month comment period. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 46.

47. The allegations set forth in paragraph 47, insofar as they assert that the City, and/or City representatives, acted inappropriately or illegally during the April 2000 meeting with the BLM and County officials, are denied.

48. With regard to paragraph 48, the City admits that the BLM published a Final EIS on June 2, 2000. The City denies, however, any allegations set forth in paragraph 48 insofar as they assert that the Final EIS adequately evaluated the Soledad Canyon Project's impact on the environment or was in compliance with applicable law.

49. With regard to paragraph 49, the City asserts that the August 1, 2000 Record of Decision ("ROD") cited therein speaks for itself. The City denies all allegations set forth in paragraph 49 insofar as they assert that there has been a decade of environmental review of the Soledad Canyon Project.

50. With regard to paragraph 50, the City asserts that the August 1, 2000 ROD cited therein speaks for itself.

51. With regard to paragraph 51, the City admits that it filed an appeal of the August 1, 2000 ROD with the Interior Board of Land Appeals ("IBLA") in Virginia. The City also admits that it petitioned the IBLA for a stay of proceeding pending appeal. The City asserts that the IBLA declined to take action on the stay request pending final determination by the County.

52. With regard to paragraph 52, the City admits that the BLM filed a Request for Expedited Review of the appeals by the IBLA. The City asserts that the letter from the Assistant Secretary of the Interior speaks for itself.

53. With regard to paragraph 53, the City admits that the IBLA granted the BLM's request for expedited review.

54. With regard to paragraph 54, the City admits that the IBLA did issue an order closing briefing in the appeal. The

City further asserts that the IBLA decision cited in paragraph 54 speaks for itself. All other allegations set forth in paragraph 54 are denied.

55. With regard to paragraph 55, the City asserts that the January 8, 2002 IBLA decision cited therein speaks for itself. The City denies, however, all allegations set forth in paragraph 55 insofar as they assert that the IBLA decision was legally supportable or in compliance with applicable law.

56. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 56.

57. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 57.

58. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 58.

59. With regard to paragraph 59, the City asserts that the press release cited therein speaks for itself. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 59.

60. The allegations set forth in paragraph 60, insofar as they describe the purpose of the TMC Advisory Executive Committee, are denied.

61. With regard to paragraph 61, the City asserts that the press release cited therein speaks for itself.

62. The City is without sufficient information in which

to form a belief as to the accuracy of the allegations set forth in paragraph 62.

63. The allegations set forth in paragraph 63 are admitted.

64. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 64.

65. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 65.

66. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 66.

67. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 67.

68. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 68.

69. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 69.

70. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 70.

71. The City is without sufficient information in which

to form a belief as to the accuracy of the allegations set forth in paragraph 71.

72. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 72.

73. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 73.

74. With regard to paragraph 74, the City admits that the public review process for the Draft EIR was nine months. The City denies, however, any allegations set forth in paragraph 74 insofar as they assert that the nine-month review process was in violation of CEQA.

75. With regard to paragraph 75, the City admits that an Additional Environmental Information to the Draft EIR ("AEIDEIR") document was prepared in August 2000 and circulated for a four-month public review. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 75.

76. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 76.

77. The allegations set forth in paragraph 77, insofar as they assert that the County's authority under SMARA and CEQA, as it relates to the Soledad Canyon Project, is limited by federal law, are denied.

78. With regard to paragraph 78, the City asserts that the 1999 Staff Analysis for the Project cited therein speaks for itself.

79. With regard to paragraph 79, the City admits that the April 21, 1999 Planning Commission hearing resulted in a 60-day continuance to provide time for CEMEX to respond to issues raised during the hearing. The City denies, however, all allegations set forth in paragraph 79 insofar as they assert that the City improperly or unduly influenced the County's decision to continue the hearing.

80. With regard to paragraph 80, the City admits that a hearing was held on June 2, 1999 and that the comment period for the Draft EIR was continued an additional 90 days. The City denies, however, all allegations set forth in paragraph 80 insofar as they assert that the City improperly or unduly influenced the County's decision to continue the comment period.

81. With regard to paragraph 81, the City admits that a hearing was held on July 14, 1999 and that the matter was continued until September 22, 1999. The City denies, however, all allegations set forth in paragraph 81 insofar as they assert that the City improperly or unduly influenced the County's decision to continue the hearing.

82. The allegations set forth in paragraph 82 are admitted.

83. With regard to paragraph 83, the City admits that a hearing was held on September 15, 1999 and that the comment period for the Draft EIR was continued for an additional 60 days. The City denies, however, all allegations set forth in paragraph 83 insofar as they assert that the City

improperly or unduly influenced the County's decision to continue the comment period.

84. The allegations set forth in paragraph 84 are admitted.

85. With regard to paragraph 85, the City admits that the BLM did decide to prepare a supplement to the federal DEIS and that members of the LABOS did move to have the Soledad Canyon Project taken off calendar as a result of the BLM's decision.

86. With regard to paragraph 86, the City admits that the County Planning Commission did vote to deny CEMEX's application for a surface mining permit. The City denies, however, all allegations set forth in paragraph 86 insofar as they assert that the Planning Commission's decision to deny the application was improper, illegal, or in excess of the Planning Commission's authority.

87. With regard to paragraph 87, the City admits that the Planning Commission issued its findings in support of denial on February 16, 2000.

88. The allegations set forth in paragraph 88 are admitted.

89. With regard to paragraph 89, the City admits that the AEIDEIR was prepared and circulated on August 17, 2000. The City is, however, without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 89.

90. With regard to paragraph 90, the City admits that a rally in opposition to the Soledad Canyon Project was held

prior to the scheduled October 24, 2000 hearing and was attended by 5th District Supervisor Antonovich. The City denies, however, all allegations set forth in paragraph 90 insofar as they assert that the rally held by the City, or Supervisor Antonovich's attendance, was improper or illegal.

91. With regard to paragraph 91, the City admits that it has taken a position in opposition of the Soledad Canyon Project, as presently proposed. The City further asserts that the press released cited in paragraph 91 speak for themselves.

92. With regard to paragraph 92, the City admits that it the LABOS granted its motion to extend the comment period for the AEIDEIR for an additional 60 days. The City denies, however, all allegations set forth in paragraph 92 insofar as they assert that the City's motion to continue the comment period was for an improper purpose, or that the LABOS' decision to extent the comment period was improper, unnecessary, or illegal.

93. With regard to paragraph 93, the City admits that it has acted to ensure that the Soledad Canyon Project does not adversely and unnecessarily impact City resources. The City asserts that the statements cited in paragraph 93 speak for themselves. The City denies, however, all allegations set forth in paragraph 93 insofar as they assert that statements made by the City were exaggerations or half-truths.

94. With regard to paragraph 94, the City asserts that the editorial cited therein speaks for itself.

95. With regard to paragraph 95, the City admits that the LABOS convened to consider CEMEX's appeal of the Planning Commission's decision on January 23, 2001. The City is, however, without sufficient information in which to

form a belief as to the accuracy of all other allegations set forth in paragraph 95.

96. The allegations set forth in paragraph 96 are admitted.

97. With regard to paragraph 97, the City admits that it participated in negotiations with CEMEX. The City denies, however, all allegations set forth in paragraph 97 insofar as they assert that CEMEX offered numerous conditions that were beyond what was required to mitigate the impacts that the Soledad Canyon Project would have on the environment.

98. With regard to paragraph 98, the City admits that it, along with several other opponents to the Soledad Canyon Project, created the TMC Executive Advisory Committee. The City also admits that Ben Curtis has attended several TMC Executive Advisory Committee meetings. The City denies all other allegations set forth in paragraph 98.

99. With regard to paragraph 99, the City admits that the cited proposals were made to CEMEX during negotiations but denies that the TMC Executive Advisory Committee made the proposals. The City denies, however, all allegations set forth in paragraph 99 insofar as they assert that the proposals are in violation or conflict with federal law or are preempted by federal law, or place CEMEX at a competitive disadvantage.

100. The allegations set forth in paragraph 100, insofar as they assert that the proposals made to CEMEX were in conflict with federal law or otherwise preempted by federal law, are denied.

101. With regard to paragraph 101, the City admits that some of the proposed conditions were added by the County as

conditions to the Soledad Canyon Project. The City denies, however, that virtually all of the conditions were added to the Project by the County.

102. With regard to paragraph 102, the City admits that the LABOS held a hearing to consider CEMEX's appeal of the Planning Commission's decision on April 24, 2001. The City is, however, without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 102.

103. With regard to paragraph 103, the City admits that on April 24, 2001, the LABOS indicated an intent to deny the Soledad Canyon Project, as currently proposed, and instructed the Regional Planning Department to study the various alternatives and mitigation measures introduced by the community. The City also admits that the hearing was continued until June 26, 2001. The City denies, however, all allegations set forth in paragraph 102 insofar as they assert that the LABOS' actions on April 24, 2001 were improper, illegal, or outside its authority.

104. With regard to paragraph 104, the City admits that members of the LABOS were critical of the environmental review process for the Soledad Canyon Project and questioned the method used to evaluate the Project's traffic impacts. The City denies, however, all allegations set forth in paragraph 104 insofar as they assert that the LABOS' criticism of the Soledad Canyon Project's environmental review was improper, inappropriate, or outside its authority.

105. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 105.

106. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 106.

107. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 107.

108. With regard to paragraph 108, the City admits that Supervisor Antonovich has, at various times, attended public hearings held by the Santa Clarita City Council. The City denies, however, all allegations set forth in paragraph 107 insofar as they assert that Supervisor Antonovich's attendance at any public hearing held by the Santa Clarita City Council is improper or illegal.

109. With regard to paragraph 109, the City admits that in May and June 2001, biologists hired by the City discovered the presence of the endangered southwestern arroyo toad at the Project site. The City also admits that it petitioned the BLM to re-initiate formal consultation with the FWS under the Federal Endangered Species Act ("ESA") and the County to recirculate the EIR under CEQA.

110. With regard to paragraph 110, the City admits that the scheduled June 26, 2001 hearing was continued to August 28, 2001 and that CEMEX initiated the request to have the hearing continued.

111. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 111.

112. With regard to paragraph 112, the BLM news release speaks for itself.

113. With regard to paragraph 113, the City admits that on August 6, 2001, the BLM issued a Supplemental Biological Assessment addressing the discovery of the arroyo toad at the Project site. The City also admits that the BLM requested re-initiation of formal consultation under ESA. The City denies, however, all allegations set forth in paragraph 113 insofar as they assert that the BLM's Supplemental Biological Assessment adequately evaluated the Soledad Canyon Project's impact on the arroyo toad or was in compliance with applicable law.

114. With regard to paragraph 114, the City admits that the August 28, 2001 hearing was continued until November 27, 2001 to provide time for the FWS' evaluation of the Soledad Canyon Project's impact on the arroyo toad.

115. With regard to paragraph 115, the City admits that on October 25, 2001, the FWS issued a non-jeopardy opinion regarding the Soledad Canyon Project's impact on the arroyo toad. The City denies, however, all allegations set forth in paragraph 115 insofar as they assert that the Biological Opinion issued by the FWS adequately evaluated the Soledad Canyon Project's impact on the arroyo toad or was in compliance with applicable law.

116. With regard to paragraph 116, the City admits that on November 13, 2001 the County publicly distributed a proposed Final EIR, which addressed the Soledad Canyon Project's impact on the arroyo toad. The City denies, however, all allegations set forth in paragraph 116 insofar as they assert that the County's evaluation of the Project's impact on the arroyo toad was adequate or in compliance with applicable law.

117. With regard to paragraph 117, the City admits that

it requested a continuance of the November 27, 2001 hearing in order to fully evaluate the recent publication by the county of the proposed final EIR.

118. With regard to paragraph 118, the City admits that the LABOS denied a motion to continue the November 27, 2001 hearing.

119. With regard to paragraph 119, the City admits that the Planning Staff issued a report on November 5, 2001, which analyzed the project alternatives and mitigation measures proposed by the community. The City asserts that the Planning Staff's report speaks for itself.

120. With regard to paragraph 120, the City asserts that Planning Staff's report and the Regional Solicitor's opinion cited therein speak for themselves. The City denies, however, all allegations set forth in paragraph 120 insofar as they assert that the County cannot outright deny CEMEX's application for a surface mining permit.

121. With regard to paragraph 121, the City asserts that the Planning Staff's report speaks for itself. The City denies, however, all allegations set forth in paragraph 121 insofar as they assert that the project alternatives and mitigation measures proposed by the community were improper, in conflict with federal law, or in violation of CEMEX's rights.

122. With regard to paragraph 122, the City admits that the Planning Staff's report did adopt a number of the mitigation measures proposed by the community.

123. The allegations set forth in paragraph 123 are denied.

124. With regard to paragraph 124, the City asserts that

the Planning Staff's report speaks for itself. The City denies, however, all allegations set forth in paragraph 124 insofar as they assert that the conditions recommended for approval by the Planning Staff were improper, illegal, in conflict with federal law, or violative of CEMEX's rights.

125. With regard to paragraph 125, the City admits that the BLM issued a letter to the County expressing concerns over the mitigation measures recommended by the Planning Staff.

126. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 126.

127. With regard to paragraph 127, the City admits that the November 27, 2001 hearing was continued. The City denies, however, all allegations set forth in paragraph 127 insofar as they assert that the continuance of the hearing was improper or illegal.

128. With regard to paragraph 128, the City asserts that the statements made by members of the LABOS cited therein speak for themselves.

129. With regard to paragraph 129, the City asserts that the actual statements made by County officials speak for themselves. The City denies, however, all allegations set forth in paragraph 129 insofar as they assert that the statements made by County officials were incorrect, improper, or illegal.

130. With regard to paragraph 130, the City admits that the LABOS continued the November 27, 2001 hearing until January 22, 2002. The City is without sufficient information in which to form a belief as to the accuracy of all other

allegations set forth in paragraph 130.

131. With regard to paragraph 131, the City admits that Supervisor Antonovich questioned the adequacy of the evaluation of the traffic impacts of the Soledad Canyon Project.

132. With regard to paragraph 132, the City admits that Supervisor Antonovich questioned the adequacy of the standard used to determine the traffic impacts of the Soledad Canyon Project.

133. With regard to paragraph 133, the City asserts that statements by County Counsel speak for themselves. The City denies, however, all allegations set forth in paragraph 133 insofar as they assert that the position taken by County Counsel was proper and legally correct.

134. With regard to paragraph 134, the City admits that the January 22, 2002 hearing was continued to February 26, 2002. The City is without sufficient information in which to form a belief as to the accuracy of all other allegations set forth in paragraph 134.

135. With regard to paragraph 135, the City asserts that the official minutes cited therein speak for themselves.

136. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 136.

137. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 137. The City denies, however, all allegations set forth in paragraph 137 insofar as they assert that the

Department of Public Works' ("DPW") concern over traffic impacts is the result of political pressure from the Fifth District and Supervisor Antonovich.

138. With regard to paragraph 138, the City admits that the DPW has now expressed concerns regarding the Soledad Canyon Project's impact on traffic. The City denies, however, all allegations set forth in paragraph 138 insofar as they assert that the DPW has suddenly, and inexplicably, changed its position, or that the DPW's position is the result of undue political pressure.

139. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 139.

140. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 140.

141. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 141.

142. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 142.

143. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 143.

144. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 144.

145. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 145.

146. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 146.

147. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 147.

148. The City denies the allegations of paragraph 148 insofar as they assert that issues raised concerning the Project's traffic impacts were merely a pretext for delay or that the County of Los Angeles abused the environmental review process in an effort to delay the Project. The City further denies allegations that the County had established a "pattern of conduct" against CEMEX. The City asserts that the article cited speaks for itself.

149. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 149.

150. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 150.

151. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 151.

152. The City denies the allegations implying that traffic issues were resolved by the DPW's February 21, 2002 report.

AS to the remaining allegations in paragraph 152, the City is without sufficient information in which to form a belief as to the accuracy of the allegations.

153. The City denies the allegation in paragraph 153 that the DPW's February Planning Staff Report reflected a "last minute change of position on traffic by DPW". The City asserts that the Report speaks for itself. The City denies the allegation that CEMEX is entitled to damages for alleged delays during the environmental review process. The City asserts that LABOS reasons for denying CEMEX' surface mining permit were set forth in the April 18, 2002 Findings. As to the remaining allegations, the City is without sufficient information in which to form a belief as to the accuracy of the allegations.

154. The City asserts that the Report referred to in paragraph 154 speaks for itself. The City asserts that a traffic impact study should have been prepared to determine the Project's impact on the Antelope Valley Freeway and on Interstate 5, pursuant to Caltrans Guide for the Preparation of Traffic Impact Studies. The City asserts that rail-haul is needed to mitigate traffic impacts of the Project. The City at this time is without sufficient information in which to form a belief as to the accuracy of the remaining allegations set forth in paragraph 154.

155. The City asserts that the documents referenced in paragraph 155 speak for themselves. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 155.

156. The City is without sufficient information in which to form a belief as to the accuracy of the allegations set forth in paragraph 156. The City asserts that the referenced "Press

Release" speaks for itself.

157. The City asserts that CEMEX' February 25, 2002 letter referenced in paragraph 157 speaks for itself. The City denies the allegations in paragraph 157 to the extent CEMEX' claims that the County's environmental review process was improper or deficient. The City is without sufficient information in which to form a belief as to the accuracy of the other allegations set forth in paragraph 157.

158. The City admits that the LABOS held a hearing on February 26, 2002 and at the conclusion of the hearing voted its intent to deny CEMEX' surface mining permit application. The City asserts that CEMEX was provided sufficient time to show a 30 minute video tape and to present evidence or argument concerning traffic impact issues. The City admits that Rick Putnum was the only Project opponent that made a presentation at the hearing. The City denies all allegations that the hearing's procedures were improper or illegal.

159. The City denies the allegations that the LABOS decided to deny the Project prior to the February 26, 2002 hearing or that the length of presentations or the number of speakers is evidences a "pre-decisional" position.

160. The City admits that it produced documents referencing TMC meetings. The City denies the allegations that the LABOS decided to deny the Project prior to the February 26, 2002 hearing or that documents referenced in paragraph 160 evidence a "pre-decisional" position. The City denies the allegations that the City representatives' attendance at meetings concerning the Project were improper or illegal. Due to the vague and ambiguous nature of these allegations, the City lacks sufficient information with which to inform a belief as to the accuracy of the other allegations.

161. The City denies the allegations that the LABOS decided to deny the Project prior to the February 26, 2002 hearing. The City lacks sufficient information with which to inform a belief as to the accuracy of the other allegations in paragraph 161.

162. The City admits that CEMEX was granted approximately thirty (30) minutes to make its presentation to the board. The City asserts that CEMEX was provided additional time to respond to comments and concerns raised by the Board. The City asserts that statements made by Board Chairman Zev Yaroslavsky and referenced in paragraph 162, pertain to CEMEX' refusal to mitigate significant traffic impacts of the Project. The City asserts that CEMEX' complaint seeks approval of the Project, without regard to mitigation measure CEMEX agreed to but are not included in the Final Environmental Impact Statement.

163. The City admits that CEMEX showed a videotape for approximately 30 minutes at the February 26, 2002 hearing. The City denies the allegations that the videotape is evidence that the Project will not have significant impacts on Soledad Canyon Road. The City denies the allegations that the County Department of Public Works position on the traffic analysis was either improper or unreasonable. The City asserts that a thirty (30) minute videotape is not a proper analysis of the traffic impacts of the Project on Soledad Canyon Road.

164. The City admits that at the conclusion of the February 26, 2002 hearing CEMEX agreed to some of the mitigation measures identified in the February Department of Public Work's Report. The City asserts that CEMEX's offer did not address all of the concerns relating to Project traffic impacts raised by DPW and the City. The City asserts that at

the hearing CEMEX refused to revise the Environmental Impact Report ("EIR") and re-circulate the revised EIR. The City asserts that CEMEX was put on notice for weeks regarding the DPW's traffic issues but refused to provide any further analysis to DPW or agree to any reasonable mitigation measures.

165. The City denies the allegations that CEMEX was not provided sufficient time to address traffic issues raised by the County DPW. The City asserts that traffic issues have been a concern throughout the review process. The City denies the allegations that the Project has no significant impacts to the 14 Antelope Valley Freeway or that there is no need for rail-haul.

166. The City admits that LABOS voted its intent to deny the surface mining permit application on February 26, 2002. The City asserts that the LABOS reasons for the denial are set forth in the LABOS April 18, 2002 Findings. The City asserts that the motion on the intent to deny speaks for itself. The City denies all allegations that the vote on intent to deny was improper of illegal.

167. The City asserts that the record of the February 26, 2002 hearing speaks for itself. The City denies the allegations set forth in the parenthetical comments by CEMEX. The City asserts that CEMEX refused to revise and re-circulate the EIR to address the traffic issues raised by County DPW.

168. The City admits that the LABOS voted its intent to deny and instructed County Counsel to prepare findings for denial, following an approximately hour long hearing on the issue. The City denies the other allegations in paragraph 168.

169. The City admits the allegations in paragraph 169.

170. The City admits the allegations in paragraph 170. The City asserts that on April 18, 2002 the LABOS issued its findings.

171. The City admits the allegations in paragraph 171.

172. The City asserts that the supplemental agenda referred to in paragraph 172 speaks for itself.

173. The City lacks sufficient information and belief to either admit or deny the allegations set forth in paragraph 173.

174. The City asserts that CEMEX's April 22 letter speaks for itself. The City denies the merits of the letter's contents.

175. The City asserts that the transcript of the February 26, 2002 County Board hearing and the findings referred to in paragraph 175 speak for themselves. The City denies all allegations concerning the meaning or impact of the Board's Statements and Findings.

176. The City denies all allegations insofar as they assert that the County's findings and denial of the Project were in any way improper, illegal or unsupportable.

177. The allegations set forth in paragraph 177 are denied.

178. The City denies all allegations insofar as they assert that the County Board's adoption of the findings was in any manner improper or illegal.

179. The City asserts that the minutes of the County Board's April 23, 2002 hearing speak for themselves. The City admits the County unanimously denied surface mining

permit No. 91-165-(5). The City denies CEMEX's characterization of the April 23, 2002 hearing or that the County's action was in any way improper or illegal.

180. The allegations set forth in paragraph 180 are denied.

181. The allegations set forth in paragraph 181 are denied.

182. With regard to paragraph 182, the City asserts that the article cited therein speaks for itself and denies the article's accuracy. The City denies, however, all allegations set forth in paragraph 182 insofar as they assert that the City has an improper relationship with County officials, or has acted in an improper or illegal manner to unduly influence the County.

183. With regard to paragraph 183, the City asserts that the IBLA has issued a decision affirming, in part, and denying, modifying, in part, the BLM's ROD. The City denies, however, all allegations set forth in paragraph 183 insofar as they assert that the IBLA's decision was proper or legally correct.

184. The allegations set forth in paragraph 184 are denied.

FIRST CLAIM FOR RELIEF

185. With regard to paragraph 185, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 185.

186. The allegations set forth in paragraph 186 are denied.

187. With regard to paragraph 187, the City asserts that CEMEX has submitted a mining and reclamation plan to the BLM and that on August 1, 2000, the BLM approved the plan

through the issuance of a ROD, and on January 8, 2002, the IBLA affirmed, in part, and modified, in part, the BLM's decision. All other allegations set forth in paragraph 187 are denied.

188. With regard to paragraph 188, the City admits that the County has not approved CEMEX's application for a surface mining permit. The City denies, however, all allegations set forth in paragraph 188 insofar as they assert that the County's refusal, up to this point, to approve CEMEX's application is improper, illegal, or in excess of the County's authority.

189. The allegations set forth in paragraph 189 are denied.

190. With regard to paragraph 190, the City admits that the Planning Commission denied CEMEX's application for a surface mining permit. The City denies, however, all allegations set forth in paragraph 190 insofar as they assert that the Planning Commission's denial was improper, illegal, or in excess of its authority.

191. With regard to paragraph 191, the City admits that the LABOS has not approved CEMEX's application for a surface mining permit. The City denies, however, all allegations set forth in paragraph 191 insofar as they assert that the LABOS' action with regard to CEMEX's permit application were improper, illegal, or in excess of its authority.

192. The allegations set forth in paragraph 192, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied.

193. The allegations set forth in paragraph 193, insofar as

they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied.

194. The allegations set forth in paragraph 194, insofar as they assert that the City has acted improperly or illegally with regard to CEMEX's permit application, are denied.

195. The allegations set forth in paragraph 195, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied.

196. The allegations set forth in paragraph 196, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied.

197. The allegations set forth in paragraph 197 are denied.

198. The allegations set forth in paragraph 198 are denied.

199. The allegations set forth in paragraph 199 are denied.

200. With regard to paragraph 200, the City requests that CEMEX be denied all relief requested therein.

SECOND CLAIM FOR RELIEF

201. With regard to paragraph 201, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 200.

202. The allegations set forth in paragraph 202, insofar as they assert that the decisions made by the BLM regarding

determination of alternatives and quantities to be mined have the force of federal law, are denied. The City denies all other allegations set forth in paragraph 202 insofar as they assert that federal regulations preclude a permittee from deviating from an approved plan.

203. The allegations set forth in paragraph 203, insofar as they assert that the conditions imposed, or recommended to be imposed, by the County are improper, illegal, or in conflict with federal law, are denied.

204. The allegations set forth in paragraph 204, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied.

205. The allegations set forth in paragraph 205 are denied.

206. The allegations set forth in paragraph 206 are denied.

207. With regard to paragraph 207, the City requests that CEMEX be denied all relief requested therein.

THIRD CLAIM FOR RELIEF

208. With regard to paragraph 208, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 207.

209. With regard to paragraph 209, the City asserts that the Due Process Clause of the Fourteenth Amendment speaks for itself.

210. With regard to paragraph 210, the City asserts that 42 U.S.C. § 1983 speaks for itself.

211. The allegations set forth in paragraph 211 are denied.

212. The allegations set forth in paragraph 212 are denied.

213. The allegations set forth in paragraph 213 are denied.

214. The allegations set forth in paragraph 214 are denied.

215. The allegations set forth in paragraph 215 are denied.

216. The allegations set forth in paragraph 216, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied. The City asserts that the reasons for denial of the surface mining permit are set forth in the LABOS April 18, 2002 Findings.

217. The allegations set forth in paragraph 217 are denied.

218. The allegations set forth in paragraph 218, insofar as they assert that the LABOS has acted improperly, illegally, or in excess of its authority with regard to CEMEX's permit application, are denied. The City asserts that the reasons for denial of the surface mining permit are set forth in the LABOS April 18, 2002 Findings.

219. The allegations set forth in paragraph 219 are denied.

220. The City lacks sufficient information to form a belief as to the allegations in paragraph 220.

221. The allegations set forth in paragraph 221 are denied.

222. With regard to paragraph 222, the City requests that CEMEX be denied all relief requested therein.

FOURTH CLAIM FOR RELIEF

223. With regard to paragraph 223, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 222.

224. With regard to paragraph 224, the City asserts that the Due Process Clause of the Fourteenth Amendment speaks for itself.

225. With regard to paragraph 225, the City asserts that 42 U.S.C. § 1983 speaks for itself.

226. The allegations set forth in paragraph 226 are denied.

227. The allegations set forth in paragraph 227 are denied.

228. The allegations set forth in paragraph 228 are denied.

229. The allegations set forth in paragraph 229 are denied.

230. The allegations set forth in paragraph 230 are denied.

231. The allegations set forth in paragraph 231 are denied.

232. The allegations set forth in paragraph 232 are denied.

233. The City is without sufficient information to form a belief concerning the allegations in paragraph 233.

234. The City is without sufficient information to form a belief concerning the allegations in paragraph 234.

235. With regard to paragraph 235, the City requests that CEMEX be denied all relief requested therein.

FIFTH CLAIM FOR RELIEF

236. With regard to paragraph 236, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 235.

237. With regard to paragraph 237, the City asserts that the Equal Protection Clause of the Fourteenth Amendment speaks for itself.

238. With regard to paragraph 238, the City asserts that 42 U.S.C. § 1983 speaks for itself.

239. The allegations set forth in paragraph 239 are denied.

240. The allegations set forth in paragraph 240 are denied.

241. The allegations set forth in paragraph 241 are denied.

242. The allegations set forth in paragraph 242 are denied.

243. The allegations set forth in paragraph 243 are denied.

244. The allegations set forth in paragraph 244 are denied.

245. With regard to paragraph 245, the City requests that CEMEX be denied all relief requested therein.

SIXTH CLAIM FOR RELIEF

246. With regard to paragraph 246, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 245.

247. With regard to paragraph 247, the City asserts that

the mandates under CEQA cited therein speak for themselves.

248. The City is without sufficient knowledge in which to form a belief as to the accuracy of the allegations set forth in paragraph 248.

249. With regard to paragraph 249, the City admits that the AEIDEIR was prepared and circulated in August 2000.

250. The allegations set forth in paragraph 250, insofar as they assert that two EIRs were presented to the LABOS during 2001 that were sufficient for certification, are denied.

251. The allegations set forth in paragraph 251, insofar as they assert that the EIR presented to the LABOS at the February 26, 2002 hearing was sufficient for certification, are denied. The City asserts that the reasons for denial of the surface mining permit are set forth in the LABOS April 18, 2002 Findings. The City denies the allegations in paragraph 251 to the extent they assert that the LABOS denial of the surface mining permit was improper, illegal or in excess of the LABOS' authority.

252. The allegations set forth in paragraph 252 are denied.

253. The allegations set forth in paragraph 253 are denied.

254. The allegations set forth in paragraph 254 are denied.

255. The allegations set forth in paragraph 255 are denied.

256. With regard to paragraph 256, the City requests that CEMEX be denied all relief requested therein.

SEVENTH CLAIM FOR RELIEF

257. With regard to paragraph 257, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 256.

258. With regard to paragraph 258, the City asserts that the Takings Clause of the Fifth Amendment speaks for itself.

259. With regard to paragraph 259, the City asserts that 42 U.S.C. § 1983 speaks for itself.

260. The allegations set forth in paragraph 260 are denied.

261. The allegations set forth in paragraph 261 are denied.

262. The allegations set forth in paragraph 262 are denied.

263. The City is without sufficient information to form a belief concerning the accuracy of the allegations in paragraph 263.

264. The allegations set forth in paragraph 264 are denied.

265. The allegations set forth in paragraph 265 are denied.

266. With regard to paragraph 266, the City requests that CEMEX be denied all relief requested therein.

EIGHTH CLAIM FOR RELIEF

(For Just Compensation-Inverse Condemnation, pursuant to the California Constitution, Art. I, § 19)

267. With regard to paragraph 267, the City refers to and incorporates by reference each and every answer contained in

paragraphs 1 through 266.

268. The City asserts that the reference section of the California Constitution speaks for itself.

269. The allegations set forth in paragraph 269 are denied.

270. The allegations set forth in paragraph 270 are denied.

271. The allegations set forth in paragraph 271 are denied.

272. The allegations set forth in paragraph 272 are denied.

273. The allegations set forth in paragraph 273 are denied.

274. The allegations set forth in paragraph 274 are denied.

275. The allegations set forth in paragraph 275 are denied.

276. With regard to paragraph 276, the City requests that CEMEX be denied all relief requested therein.

NINTH CLAIM FOR RELIEF

(For Writ of Administrative Mandates, Cal. Civ. Proc. Code § 1094.5 – To Reconsider Denial and Compel Approval of the Federally-Approved Project With Conditions Consistent With Federal Requirements)

277. With regard to paragraph 277, the City refers to and incorporates by reference each and every answer contained in paragraphs 1 through 276.

278. The City admits the County is the "lead agency" for issuance of a surface mining permit to CEMEX. The City denies the County's discretion is limited by Federal law as

denies the County's discretion is limited by Federal law as alleged by CEMEX.

279. The City admits the allegations set forth in paragraph 279.

280. The allegations set forth in paragraph 280 are denied.

281. The allegations set forth in paragraph 281 are denied.

282. The allegations set forth in paragraph 282 are denied.

283. The allegations set forth in paragraph 283 are denied.

284. The allegations set forth in paragraph 284 are denied.

285. With respect to paragraph 285, the City requests that CEMEX be denied all relief requested therein.

GENERAL DENIAL

All allegations set forth in CEMEX's Complaint that were not specifically admitted or denied are hereby denied.

AFFIRMATIVE DEFENSES

Based upon information and belief, the City asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

CEMEX has failed to exhaust necessary administrative remedies. Accordingly, this Court does not have jurisdiction to hear CEMEX's claims.

SECOND AFFIRMATIVE DEFENSE

CEMEX's claims are not ripe for judicial review. Accordingly, this Court does not have jurisdiction to hear CEMEX's claims.

THIRD AFFIRMATIVE DEFENSE

This Court does not have jurisdiction to hear CEMEX's federal claims. Accordingly, supplemental jurisdiction under 28 U.S.C. § 1367 does not exist to hear CEMEX's state law claim under CEQA.

FOURTH AFFIRMATIVE DEFENSE

CEMEX has failed to give the requisite 60-day notice of its intent to bring a claim for damages against the County.

FIFTH AFFIRMATIVE DEFENSE

CEMEX fails to state a claim for which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

The Doctrine of Unclean Hands bars CEMEX from obtaining the equitable relief sought in its Complaint.

SEVENTH AFFIRMATIVE DEFENSE

The Materials Act of 1947 and BLM regulations do no prevent the County from imposing additional environmental conditions upon CEMEX's application for a surface mining permit or outright denying CEMEX's permit application.

EIGHTH AFFIRMATIVE DEFENSE

The relief sought violates the federal Administrative Procedure Act, the National Environmental Policy Act and Title 40 of the Code of Federal Regulations Parts 1505 and 1506.

NINTH AFFIRMATIVE DEFENSE

The conditions imposed, or recommended to be imposed, upon CEMEX's permit application by the County do not prevent the federal government from disposing of sand and gravel on federal land and are not, therefore, in conflict, or inconsistent, with federal law.

TENTH AFFIRMATIVE DEFENSE

All actions taken by the City and the County are protected actions pursuant to authorized processes under CEQA and SMARA.

ELEVENTH AFFIRMATIVE DEFENSE

Any and all delays, if any, have been caused by CEMEX's conduct in the processing of CEMEX's application for a surface mining permit.

TWELFTH AFFIRMATIVE DEFENSE

All delays and/or continuances in the processing of CEMEX's application for a surface mining permit were the result of legitimate needs to further evaluate the Soledad Canyon Project's impact on the environment.

THIRTEENTH AFFIRMATIVE DEFENSE

CEMEX does not have a protectable property interest in its federal contracts or the ROD within the meaning of the Due Process Clause or Equal Protection Clause of the Fourteenth Amendment, or within the meaning of the Takings Clause of the Fifth Amendment.

FOURTEENTH AFFIRMATIVE DEFENSE

All conditions imposed, or recommended to be imposed, by the County on CEMEX's application for a surface mining permit are rationally related to a legitimate governmental interest.

FIFTEENTH AFFIRMATIVE DEFENSE

The Planning Commission's decision to deny CEMEX's application for a surface mining permit had a rational basis relating to a legitimate governmental purpose.

SIXTEENTH AFFIRMATIVE DEFENSE

The Soledad Canyon Project is not similarly situated to other mining operations in the area within the meaning of the Equal Protection Clause of the Fourteenth Amendment.

SEVENTEENTH AFFIRMATIVE DEFENSE

The delays and continuances during the CEQA review process, if any, were the result of actions taken by CEMEX. The one-year mandate under CEQA is not, therefore, applicable to CEMEX's application for a surface mining permit.

EIGHTEENTH AFFIRMATIVE DEFENSE

CEMEX appealed the Planning Commission's denial of its permit application. The Planning Commission's denial constitutes action on the part of the County within the meaning of CEQA. The County has, therefore, acted within the one-year period in compliance with CEQA.

NINETEENTH AFFIRMATIVE DEFENSE

The County has not denied CEMEX all beneficial use of its property within the meaning of the Takings Clause of the Fifth Amendment.

TWENTIETH AFFIRMATIVE DEFENSE

CEMEX has not alleged, and the County has not engaged in, any conduct that warrants an award of attorney's fees and costs to CEMEX.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The actions of the County in processing CEMEX's applications are expressly authorized and mandated by the Federal contracts and the ROD.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction to hear this case.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Court must abstain from hearing this case under the Younger abstention doctrine or other applicable authority.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The requested relief is an unlawful abdication of the County's police powers as guaranteed by Article 11, §§ 4 and 11 of the California Constitution, and other applicable laws and regulations.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The requested relief violates the separation of powers doctrine in violation of the United States Constitution and Article 3, § 3 of the California Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The requested relief violates the City of Santa Clarita's right of petition as guaranteed by the First Amendment to the United States Constitution and under Article 1 § 3 of the California Constitution.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The requested relief violates the City's right of consultation under Public Resources Code § 21153 and violates the public review provisions of CEQA.

TWENTY-EIGHT AFFIRMATIVE DEFENSE

The relief sought violates public policy.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The relief sought violates property rights of the City which is the fee owner of the land on which the proposed mining project is located.

PRAYER FOR RELIEF

WHEREAS, the City prays for judgment against CEMEX as follows:

1. That CEMEX take nothing by its Complaint;

2. For attorney's fees and costs associated with this action; and

3. For such other relief as the Court deems just and proper.

DATED: March 8, 2004

RESPECTFULLY SUBMITTED,

BURKE, WILLIAMS & SORENSEN, LLP
By: /s/ Carl K. Newton
Carl K. Newton, City Attorney
City of Santa Clarita
Deborah C. Prosser
Geralyn L. Skapik
Timothy H. Irons
Attorneys for
CITY OF SANTA CLARITA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of ANSWER OF THE CITY OF SANTA CLARITA TO SECOND AMENDED COMPLAINT OF CEMEX to be served via regular mail this 8th day of March, 2004, to the following:

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APPENDIX H

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FILING FEE EXEMPT
GOV'T CODE § 6103

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CEMEX, INC., a Louisiana Corporation,
Plaintiff,
v.
COUNTY OF LOS ANGELES, and
DOES 1 THROUGH 10, INCLUSIVE
Defendants.

UNITED STATES OF AMERICA,
Plaintiff-in-Intervention.

City of Santa Clarita,
Defendant-in-Intervention.

Case No. 0200747 DT (FMOx)

Judge Dickran Tevrizian
Courtroom 880

CITY OF SANTA CLARITA'S NOTICE OF *MOTION AND MOTION FOR SUMMARY* JUDGMENT/ADJUDICATION

[STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW; DECLARATION OF DEBORAH PROSSER; DECLARATION OF TIMOTHY IRONS; REQUEST FOR JUDICIAL NOTICE; AND PROPOSED ORDER FILED CONCURRENTLY]

Date: April 26, 2004
Time: 10:00 a.m.
Dept: 880

Complaint Filed: 01/25/02

First Amended
Complaint Filed: 04/11/02

Second Amended
Complaint Filed: 05/09/02

Trial Date: None set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 26, 2004, at 10:00 a.m. in Courtroom 800 in the above-entitled Court, located at the Roybal Center & Federal Building, 255 East Temple Street, Los Angeles, California, City of Santa Clarita ("City"), Defendant-in-intervention, will move the Court for Summary Judgment, or in the alternative Summary Adjudication, ("Motion") pursuant to the Court's November 20, 2003

scheduling order setting April 26, 2004 as the deadline to hear motions for summary judgment. This Motion is brought pursuant to Federal Rule of Civil Procedure 56 on the following grounds:

(1) Based on the undisputed facts, Plaintiffs', CEMEX, Inc. ("CEMEX") and United States (collectively "Plaintiffs"), federal preemption claims fail as a matter of law [CEMEX's First and Second Claims for Relief; United States' First, Second and Third Claims for Relief],

(2) CEMEX's Procedural Due Process and Takings claims are premature and fail as a matter of law [CEMEX's Third and Seventh Claims for Relief][1] ,

(3) CEMEX's Equal Protection claim against the County of Los Angeles ("County") fails as a matter of law [CEMEX's Fifth Claim for Relief],

(4) If Plaintiff's federal claims are dismissed, the court lacks jurisdiction to hear the pendant state claims [CEMEX's Sixth, Eighth and Ninth Claims for Relief], and

(5) The application of the Younger Abstention Doctrine requires dismissal of all claims.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on March 12, 2004.

This Motion is based on this Notice of Motion and Motion, the memorandum of points and authorities, attached,

---

[1] CEMEX's Fourth Claim for Relief for violation of Substantive Due Process was dismissed pursuant to the Court's July 29, 2002 Order.

the Statement of Uncontroverted Facts and Conclusions of Law in support of the Motion, the Declaration of Timothy H. Irons, and the City's Request for Judicial Notice, all filed concurrently, the pleadings and papers filed herein, the County's Administrative Record lodged with the Court, any Reply papers filed by the City and all matters that may be raised at the hearing on the Motion.

DATED: April 2nd, 2004

RESPECTFULLY SUBMITTED,

BURKE, WILLIAMS & SORENSEN, LLP
By: /s/
Carl K. Newton, City Attorney
City of Santa Clarita
Deborah C. Prosser
Geralyn L. Skapik
Timothy H. Irons
Attorneys for
CITY OF SANTA CLARITA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENTS

(1) There is no legal or factual basis supporting Plaintiffs' claims that federal mining law and a federal mining decision preempt state environmental laws and regulations designed to protect the public. It is undisputed that the federal decision to mine fifty six (56) million tons of sand and gravel in Soledad Canyon, California expressly conditions *federal* approval on the applicant's compliance with state laws and regulations. Statement of Uncontroverted Facts ("SUF") Nos. 1-7. The Bureau of Land Management ("BLM") expressly conditioned its Record of Decision ("ROD") on local review and approval, including compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* SUF Nos. 8-14. It is undisputed that the federal government signed a Memorandum of Understanding ("MOU") with the State of California acknowledging the applicability of state environmental laws to federal surface mining activities. SUF Nos. 15-16. These *federal* conditions are consistent with the purpose and intent of the federal Materials Act of 1947, which is to dispose of sand and gravel in a manner that is *not detrimental to the public's interest.*

At its heart, this case is not as much about the preemption of the local environmental regulation as it is about Plaintiffs asking the court to rescind these *federal decisions*, in violation of the federal Administrative Procedure Act ("APA"); as well as other federal law. CEQA does not mandate particular land uses but requires only that, however land is used, damage to the environment is kept within prescribed limits. The only "condition" the County Board of Supervisors imposed on CEMEX, Inc. ("CEMEX") was recirculation of the Project's Environmental Impact Report ("EIR"), to fully address the

Project's effect on traffic. This condition amounts to reasonable environmental regulation, not a land-use decision. Therefore, it is not preempted.

(2) CEMEX's Procedural Due Process and Takings claims are premature. Fifth Amendment Takings claims require a taking *without just compensation*. Where state law provides procedures to compensate for the deprivation, a Fifth Amendment Taking is not ripe until the state procedures have been exhausted. CEMEX has failed to exhaust available state procedures. Procedural Due Process claims alleging a deprivation of the same property rights are subsumed under the Takings claim and therefore must also satisfy the exhaustion requirement. As noted above, local review and approval is a condition precedent to CEMEX's right to the sand and gravel, pursuant to the express terms of the federal contracts. As such, CEMEX has not been deprived of any *vested* rights under the federal contracts.

(3) CEMEX's Equal Protection claim fails as a matter of law. To state an equal protection claim, CEMEX must charge the County of Los Angeles ("County") not only with deliberately acting against it, but also with singling it out for selective enforcement on an impermissible basis. There is no allegation that the County intentionally discriminated against CEMEX for constitutionally suspect motives. Moreover, the County's approval process and ultimate denial is rationally related to its legitimate authority under CEQA, the Surface Mining and Reclamation Act of 1975, Cal. Pub. Res. Code § 2710, *et seq.* ("SMARA"), the federal contracts, the ROD and federal law.

(4) CEMEX's state claims for inverse condemnation, traditional mandate and administrative mandamus are only properly before the Court as pendant state claims. If

Plaintiffs' federal claims are without merit, then the Court lacks pendant jurisdiction over the remaining state law claims.

(5) The *Younger* Abstention doctrine requires dismissal. Abstention is mandatory if: (a) at the time of the filing of the lawsuit the state proceedings are ongoing; (b) the proceedings implicate important state interests; and (c) the state proceedings provide an adequate opportunity to raise federal questions. CEMEX filed its lawsuit prior to a previously scheduled hearing on its appeal before the County Board of Supervisors. The state proceeding was ongoing at the time of filing the complaint, adequate opportunities to raise federal questions were available to CEMEX and compliance with state environmental laws is an important state interest.

II. FACTUAL BACKGROUND

This lawsuit arises from CEMEX's ill-founded frustration with the County's administrative review of Surface Mining Permit Application Number 91-165(5) ("Permit"). The Permit is for the extraction of up to 69.2 million tons of material to produce and sell approximately fifty six (56) million tons of sand and gravel, in Soledad Canyon, California ("Project"). Consent Decree, Exhibit H, pg. 7, ¶ aa. The City has actively opposed the granting of the Permit for the Project, on the grounds that the Project, as proposed, will cause significant detrimental impacts to the City's air, water and land resources as well as to the health, safety and welfare of its citizens. See, City's Renewed Motion to Intervene filed May 28, 2002, docket numbers 40 to 43.

In 1990, the BLM contracted the sale of sand and gravel (the "Contracts") to Transmix Corporation, predecessor in interest to CEMEX. (CEMEX Second Amended Complaint ("SAC") 11:16-19). The sand and gravel contracts require

compliance with state and local rules and regulations.[2] Pursuant to a *force majeure* clause, the Contracts may be terminated if state and local rules, regulations and decisions prevent CEMEX, through no fault of its own, from mining. SUF Nos. 6 and 7. One of the contract conditions is the applicant's compliance with SMARA. SUF No. 5. Under SMARA, CEMEX is required to obtain a surface mining permit from the County. Thus, CEMEX is subject to two independent environmental schemes: federal review and approval under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA") and local review and approval under SMARA and the CEQA.[3]

In May of 1990 Transit Mixed Concrete ("TMC") (predecessor to CEMEX) submitted a proposed mining and reclamation plan for the Project to the BLM. SUF No. 18. The following year, TMC submitted its Permit application to the County. SUF No. 19. In 1995, TMC's consultant prepared a Screencheck EIR on the Project. SUF No. 20. On February 17, 1999 County released the Draft EIR for public review and comment. SUF No. 21. After conducting the CEQA review, the County Planning Commission denied the Permit application on February 16, 2000. SUF No. 22.

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[2] The Contracts expressly require compliance with the rules and regulations of the South Coast Air Quality Management District ("SCAQMD"), the rules and regulations of the State of California, Regional Water Quality Control Board ("SCWQCB") and with SMARA. SUF Nos. 4 and 5.

[3] Approval of a mining permit is a "project" subject to the requirements of CEQA. Public Resources Code § 21065; *McQueen v. Board of Directors of Mid-Peninsula Regional Open Space District*, 202 Cal. App. 3d 1136, 1143, 249 Cal. Rptr. 439 (1988) [The term 'project' is given a broad interpretation in order to maximize the protection of the environment].

Approximately six months later, on August 1, 2000, the BLM, issued its ROD, pursuant to NEPA. SUF No. 23. Each of these decisions was appealed. SUF Nos. 24 and 25. On January 8, 2002, the Interior Board of Land Appeals ("IBLA") issued its ruling affirming the ROD. SUF No. 26. On February 26, 2002 -- after CEMEX filed the instant lawsuit -- the County Board held a hearing on CEMEX's Permit and voted its intent to deny the appeal. SUF Nos. 27-29.

At the February 26, 2002 hearing on CEMEX's appeal, Supervisor Molina sought to clarify whether or not CEMEX was willing recirculate the EIR for public review and comment, due to a dispute over traffic impacts. SUF Nos. 28 and 29; SAC, 78:19-79: 6. CEMEX, however, refused to recirculate the EIR. SUF No. 28. Based on CEMEX's refusal to subject the EIR to additional public review and comment, particularly with regard to the traffic analysis, and the fact that CEMEX filed suit against the County to preempt the County's environmental review, the County Board voted its intent to deny the Permit. SUF No. 29; SAC, 78:19-79: 6. On April 23, 2002 the County Board issued findings in support of the denial. SUF No. 30.

The City actively sought to intervene shortly after the filing of the lawsuit. City was twice denied intervention status. On February 24, 2004, the Ninth Circuit Court of Appeals overturned the second denial. One day prior to the Ninth Circuit's decision, the original parties filed a Motion for Entry of Consent Decree. The Proposed Consent Decree finds that federal law preempts the County denial of the Permit and that any further application of CEQA or SMARA is preempted, even if significant new information was added to the Final EIR. Consent Decree, 53: 20-28. Despite the County's previously stated position that it must recirculate the

Final EIR prior to certification, the proposed Consent Decree finds that any further recirculation or review is preempted.

III. LEGAL ARGUMENT

A motion for summary judgment is appropriate where there is no genuine issue of material fact and where the moving party is entitled to a judgment as a matter of law. *See*, Federal Rule of Civil Procedure, Rule 56 (c). A motion for summary judgment "pierces" the pleadings and puts the opponent to the test of affirmatively coming forward with sufficient evidence for its claims or defenses to create a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed. 2d 265 (1986). Because this court's review is based upon the County's administrative record, summary judgment is especially appropriate. *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 36 (2003).

A. The Undisputed Facts Establish That Plaintiffs Federal Preemption Claims Fail As A Matter Of Law

CEMEX's First and Second Claims for Relief and the United States' First, Second and Third Claims for Relief each allege that federal law and the federal decision to mine in Soledad Canyon preempt local environmental review pursuant to CEQA and SMARA. These claims are without merit for the following reasons: (1) Plaintiffs have failed to exhaust administrative remedies under the federal Administrative Procedures Act, (2) Congress has not expressed an intent to occupy the field of surface mining, (3) the Federal Materials Act of 1947 does not conflict with CEQA or SMARA, (4) the MOU, federal contracts and ROD mandate compliance with CEQA and SMARA, (5) the Federal Clean Air Act and Clean

Water Act mandate compliance with CEQA and (6) the County approval process, the conditions the County considered and the County's denial all concern environmental regulation, not land-use decisions.

1. Plaintiffs' Preemption Claims Fail As a Matter Of Law Because Federal Administrative Procedures Act Remedies Have Not Been Exhausted

The Plaintiffs seek relief to preempt CEQA and SMARA, effectively rescinds the Federal Contracts and the ROD in violation of the federal Administrative Procedures Act ("APA"). If the BLM believes that compliance with CEQA is no longer advisable or occurs only in a truncated or advisory fashion, its first duty under the APA is to rescind the ROD. Such an action is subject to notice and public comment requirements and judicial review as a "final agency action." See, 5 U.S.C. § 704; *California Dep't of Health Servs. v. Babbitt*, 46 F. Supp. 2d 13, 27 (D.D.C. 1999) [the decision rescinding Secretary Lujan's ROD was a final agency action]; *Bennett v. Spear*, 520 U.S. 154, 177, 117 S. Ct. 1154, 1168 (1997). Plaintiffs' preemption arguments are a disguised attempt to overturn the ROD without satisfying the notice and procedural requirements of the APA.

Likewise, if CEMEX believed that compliance with CEQA was preempted, CEMEX was required to administratively appeal the ROD's CEQA determination. Agencies may require by rule that an appeal be taken to a superior agency authority before judicial review may be sought. *United States v. Consolidated Mines & Smelting Co.*, 455 F.2d 432, 440 (9th Cir. 1971). Here, the Department of Interior requires by rule that appeals be taken to the IBLA

before being subject to judicial review. 43 Code of Federal Regulations § 4.21 (c) CEMEX's failure to pursue the required appeal relieves this court of jurisdiction.

2. Congress Has Not Expressed Its Intent to Occupy the Field of Surface Mining

While Congressional power over federal lands is absolute, "States are free to enforce their criminal and civil laws on federal land so long as those laws do not conflict with federal law." *Kleppe v. New Mexico*, 426 U.S. 529, 543, 96 S.Ct. 2285, 2293, 49 L.Ed. 2d 34 (1976). "State law can be preempted [by federal law] in either of two general ways." *California Coastal Commission v. Granite Rock Co.("Granite Rock")*, 480 U.S. 572, 581, 107 S.Ct. 1419, 1425, 94 L.Ed. 2d 577 (1987). "If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted." *Id.* Congress' intent to supplant state authority in a particular field may be expressed in the terms of the statute, or can be implicit if a scheme of federal regulation is "so pervasive as to make reasonable the inference that Congress left no room for the [s]tates to supplement it." *Wisconsin Public Intervenor, et. al. v. Mortier*, 501 U.S. 597, 605, 111 S.Ct. 2476, 2481, 115 L.Ed. 2d 532 (1991).

When considering preemption, the court must "start with the assumption that the historic police powers of the [s]tates were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id.*, 501 U.S. at 605, 111 S. Ct. at 2482. "In the absence of a strong indication to the contrary, we adhere to the presumption," that Congress does not intend to "deny local communities throughout the National significant powers of self-protection." *Firemans Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 943 (9th Cir.

2002), (*quoting Wisconsin Public Intervenor v. Mortier*, 501 U.S. at 621).

The Materials Act of 1947, 30 U.S.C. § 601, *et seq* ("Act") controls disposal of federal sand and gravel. There is no express language in the Act evidencing any Congressional intent to supplant state and local authority over the environmental regulation of surface mining. To the contrary, there is language that shows an intent not to preempt. By enacting the Act, Congress gave the Secretary of the Interior the authority to dispose of sand and gravel deposits located on federal land. 30 U.S.C. § 601. This authority, however, is qualified. Under the Act, the Secretary cannot dispose of sand and gravel located on federal land if such disposal would be *detrimental to the public's interest. Id.* (emphasis added). Regulations promulgated under the Act provide that it is BLM's policy "to protect public land resources and the environment and minimize damage to public health and safety during the exploration for and the removal of such minerals;" 43 Code of Federal Regulations ("C.F.R.") § 3601.6 (d), 66 Federal Register ("F.R.") 58892, 58903 (2001). The commentary to the Final rule adopting these regulations specifically provides that "the rule does not preempt State law." (emphasis added) 66 FR 58892, 58900.

The Federal Land Policy and Management Act ("FLPMA") establishes standards for the BLM to regulate mining activities on public lands. FLPMA balances the need for domestic sources of minerals against the need to mitigate mining impacts to "protect the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resource, and archeological values," 43 U.S.C. § 1701(a)(8). FLPMA directs the BLM to "take any action necessary to prevent unnecessary or undue degradation of the [public] lands." 43 U.S.C. § 1732(b). "Unnecessary or undue

degradation" means, in part, "[a]voiding substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated." 43 C.F.R. § 3809.415(d), 65 F.R. 69998, 70122 (2001).

FLPMA regulations provide

> "[i]f State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. ***However, there is no conflict if the State law or regulation requires a higher standard of protection*** for public lands than this subpart." (Emphasis added) see, 43 C.F.R. § 3809.3, 65 F.R. at 70114.

The BLM's commentary on section 3809.3 recognizes that "[o]ne purpose of subpart 3809 is to establish a minimum level of protection for public lands...States may continue to assert jurisdiction over mining operations on the public lands." 65 F.R. at 70008-9.[4] The commentary cites *Granite Rock* as authority. *Id.* In *Granite Rock*, 480 U.S. 572, the Supreme Court determined that neither the federal Mining Act of 1872 nor land use statutes nor federal land management statutes preempted the California Coastal Commission's imposition of a permit requirement for operation of an unpatented mining claim in a national forest. The Supreme Court determined that

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[4] Indeed, the commentary provides a specific example where State law or regulations may provide a higher standard of protection, i.e. the restriction on cyanide leaching-based operations approved by voters in Montana. "In this situation, the State law or regulation will operate on public lands." *Id.*

Congress had not expressed an intent to displace state and local environmental regulation of mining claims in national forest lands. *Granite Rock*, 480 U.S. at 588. There is no reasonable basis to find that Congress intended to "occupy the field" of environmental regulation of surface mining.

3. Federal Materials Act of 1947 Does Not Conflict With CEQA or SMARA

Conflict preemption occurs when there is a conflict between federal and state law. *South Dakota Mining Association v. Lawrence County*, 977 F. Supp. 1396, 1401 (D.S.D. 1997). A conflict exists when the local enactment "stands as an obstacle to the accomplishment and execution of the full purposes of Congress," or "when it is impossible to comply with both federal and state law." *Id.* In this matter, SMARA and CEQA do not stand as an obstacle to meeting Congress' full purposes. It is also not impossible to comply with both SMARA and CEQA, and the Materials Act of 1947. In fact, SMARA[5] and CEQA[6] complement the Materials Act

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[5] The purpose of SMARA is to assure that: (1) adverse environmental impacts from surface mining are prevented or minimized and that mined lands are reclaimed; (2) the production and conservation of minerals are encouraged, while giving consideration to other values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and (3) residual hazards to the public health and safety are eliminated. Cal. Pub. Res. Code, § 2712.

[6] CEQA is also consistent with the Materials Act of 1947. The purpose of CEQA is to: (1) disclose to decision makers and the public the significant environmental effects of proposed activities; (2) identify ways to avoid or reduce environmental damage; (3) disclose to the public reasons for agency approval of projects with significant environmental effects; and (4) foster intra-agency cooperation and enhance public participation in the planning procees. Pub. Res. Code, §§ 21000, *et. seq.*

of 1947. Like the Materials Act, SMARA encourages the disposal of mineral deposits in a manner that is not detrimental to the public's interest. CEQA's core activity is environmental protection, not land use. CEQA does not mandate particular land uses but requires only that, however the land is used, damage to the environment is kept within prescribed limits. See, *Granite Rock*, 480 U.S. at 587. Moreover, CEQA may provide for a higher level of environmental protection than its federal counterpart, NEPA. While NEPA is largely procedural, CEQA requires that significant impacts be reduced to insignificant to the extent feasible. See, 14 Cal. Code Regs. §§ 15021, 15091; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 109 S. Ct. 1835, 104 L.Ed. 2d 351 (1989). As provided by BLM regulation 43 C.F.R. § 3809.3, there is no conflict if the State law or regulation requires a higher standard of protection for public lands.

4. The Federal Decisions Do Not Preempt CEQA or SMARA But Rather Mandate Compliance

The federal government acknowledged the legitimacy of SMARA and CEQA in the environmental review of federal surface mining operations in an MOU entered into between the State of California, the United States Department of Interior, and the United States Department of Agriculture. SUF Nos. 15-16. Specifically, the MOU provides for cooperation "to insure that conditions required of operators (as defined by Federal law and by SMARA and any other relevant regulations or ordinances) in minimizing adverse environmental impacts conform to all applicable local, State, and Federal regulations." SUF No. 16. It is clear from the MOU that the federal government anticipates the State of California's right to impose environmental regulations on federal surface mining projects.

The ROD mandates, as a condition of approval, that CEMEX consult with, and obtain *approval* from state regulatory agencies, including the County of Los Angeles. SUF Nos. 9-14. The ROD also requires CEMEX to comply with CEQA. SUF No. 10. The ROD expressly recognizes that the County Planning Commission had already denied CEMEX's permit and that the fate of CEMEX's appeal to the County Board of Supervisors was uncertain. County Administrative Record ("AR") 09931. Thus, the federal government recognized at the time it approved the mining operation that the County could prevent CEMEX from mining if CEMEX refused to comply with reasonable local environmental regulations or procedures.[7]

The federal Contracts that CEMEX signed specifically grant CEMEX the right to void the contracts if CEMEX is prevented from mining by rulings or decisions of municipal, federal, state, or other governmental agencies, or any laws or regulations of such entities. SUF Nos. 6-7. The *force majeure* clauses expressly contemplate the possibility that CEMEX's state permit applications could be denied. The Contracts contain no language limiting SMARA's applicability, nor do the Contracts provide any justification for preempting the local environmental review process. To the contrary, every federal decision addressing the Project has conditioned approval on compliance with state laws and regulations.

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[7] In refusing to submit a new traffic study as the County requested, CEMEX has indeed refused to comply with reasonable environmental regulation. The additional traffic study requirement is per se reasonable because it is required under state law. AR 20442-20444.

5. The Federal Clean Air Act and Clean Water Act Mandate Compliance With CEQA

It is undisputed that the federal Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, and federal Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., apply to the Project. In enacting the CAA, Congress delegated responsibility for implementing the provisions of the Act to the states through State Implementation Plans ("SIPs"). Requirements of SIPs are "binding as a matter of federal law." *Communities for a Better Environment v. Cenco Refining Co.("Cenco"),* 180 F. Supp. 2d 1062, 1069 (C.D. Cal. 2001). Under the CWA, the State Water Resources Control Board ("SWRCB") is designated as the agency authorized to exercise powers delegated to it under the CWA. 33 U.S.C. § 1313; Cal. Water Code § 13160.

FLPMA mandates that any contract issued by the federal government for the "use, occupancy, or development of the public lands" must contain a provision requiring compliance with "applicable State or Federal air or water quality standard[s] or implementation plan[s]." 43 U.S.C. § 1732 (West 2004). The ROD is consistent with Congressional intent because it specifically requires that CEMEX obtain air and water permits from the SCAQMD, the California Regional Water Quality Control Board—Los Angeles Region ("RWQCB-Los Angeles") and the California State Water Resources Control Board ("SWRCB"). SUF No. 11-13.

Where a specialized agency issues a permit for a discrete aspect of a project (here, air and water quality), it acts as a "responsible agency" under CEQA. *Cenco*, 180 F. Supp. 2d at 1069; 14 Cal. Code Reg. § 15381. Under California law, a responsible agency must review and consider the EIR

prepared by the lead agency and, if necessary, may impose additional mitigation measures and required further public participation prior to approval. 14 Cal. Code Reg. §§ 15050 (b), 15041(b). 14 Cal. Code Reg. § 15050(b). Pursuant to SCAQMD regulations, an applicant for a permit must submit an EIR where one has been prepared by the lead agency. SCAQMD Regulations, Regulation II, List and Criteria; SCAQMD Rule 210(d). SCAQMD Regulations promulgated under the authority of an approved SIP are "binding as a matter of federal law." *Cenco*, 180 F.Supp. 2d at 1068.

Similarly, the ROD requires approval or review of a General Industrial Activities Stormwater Permit ("GIASP"), a Section 401 Certification and a permit to appropriate water from the SWRCB.[8] The state agency is charged with review of CEMEX's Notice of Intent ("NOI") to operate under the applicable GIASP. The NOI is the functional equivalent of permit. *Environmental Defense Center, Inc. v. United States EPA*, 344 F.3d 832, 857 (9th Cir. 2003). Therefore, the state agency is a "responsible agency" under CEQA for purposes of reviewing CEMEX's NOI. *Cenco*, 180 F.Supp. 2d at 1069; 14 Cal. Code Reg. § 15381.

Moreover, pursuant to Section 401 of the CWA, the State must certify that the Project complies with applicable water quality requirements. 33 U.S.C. § 1341(a); *PUD NO. 1 v. Washington Department of Ecology*, 511 U.S. 700, 114 S. Ct.

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[8] California effectuates the requirements of the CWA primarily through institutions and procedures set out in certain provisions of the California Water Code (the "Water Code"), including those of the California Porter-Cologne Water Quality Act, Cal. Water Code § 13000, *et seq.* The Porter-Cologne Act established nine California Regional Water Quality Control Boards, Cal. Water Code §§ 13200, 13201, which operate under the purview of the State Board, see id. § 13225.

1900, 128 L. Ed. 2d 716 (1994). The states may condition certification upon any limitations necessary to ensure compliance with state water quality standards or any other appropriate requirement of State law. *PUD NO.1*, 511 U.S. 700, 713-4, 114 S. Ct. 1900, 1910; *Friends of the Earth v. United States Navy*, 841 F.2d 927, 930. Prior to certification, state regulations require review of a document prepared in accordance with CEQA (in this case the FEIR). *In the Matter of the Petition of North Star Hydro, LTD*, Order No. WQ 92-07, § 401 Certification, 1992 Cal. ENV LEXIS 13 (August 20, 1992). Each of these attendant local air and water permit requirements require the responsible agencies to comply with CEQA. Here, CEQA is not only a state mandate but a federal mandate.

6. The County Approval Process, County Conditions and County Denial Are Not Preempted

All the federal authorities confirm that local review and approval is a prerequisite to approval of CEMEX's mining operation. Plaintiffs may argue that they are not seeking to preempt CEQA and SMARA, but simply to preempt the County's particular application of CEQA and SMARA. There is no legal authority for the proposition that federal mining laws or any of the federal decisions in this case cut short the local environmental review process, prevent the County from considering Project conditions or prevent the County from denying the proposed Project.

a. The County Review Process and Denial Are Not Preempted

CEMEX's First Claim for Relief alleges that the County's subversion of "the local review and approval process into a

never ending delay and then denial of a Federally-approved Project constitutes a form of prohibition of the Project." SAC, 98:22-25. CEMEX further alleges that the abuse of process "has imposed additional costs, uncertainties and delays on the Project sufficient to jeopardize the implementation of the Federal land-use decisions..." SAC, 98:25-99:1. The result, as alleged by CEMEX, is that "the current and any further process of the County for the approval of CEMEX's application for a surface mining permit and reclamation plan is therefore preempted..." SAC, 99:11-14.[9] Although CEMEX contends that the County review and denial "frustrate federal intent," the undisputed facts establish the opposite as a matter of law. Indeed, preemption of the County review process frustrates the full implementation of federal law and the federal decisions. Truncating the CEQA process is *detrimental to the public interest.*

By comparison to the federal review, the local environmental review process was per se timely. First, it is undisputed that the County Planning Commission issued its denial prior to the BLM issuing the ROD on the August 1, 2000, in which it adopted the reduced North Fines Storage Area Alternative (RFNSA). SUF Nos. 22-23. In anticipation of the Planning Commission's denial, County staff offered to prepare a FEIR for the record. SUF No. 31. CEMEX

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[9] The United States makes similar allegations in its First and Third Claims for Relief alleging that "[t]he County's denial of a permit stands as an obstacle to the fulfillment of the congressional objective, evidenced in the Materials Act of 1947, to authorize the Department of Interior to administer a mineral materials sales program." U.S. Complaint, 25:26-28 And "[t]he County's delay in making the final decision concerning CEMEX's permit application stands as an obstacle to the fulfillment of BLM's mineral materials sales contracts, as contemplated by the Materials Act of 1947, and thus is preempted by federal law." U.S. Complaint, 32:9-12.

opposed this. *Id.* Second, it is undisputed that the IBLA's final federal decision on the Project was made January 8, 2002, less than two months prior to the County Board's vote of intent to deny on February 26, 2002. SUF Nos. 26-27. The County's Findings of Denial were issued shortly thereafter on April 23, 2002. SUF No. 30. Thus, the County's procedural denial occurred less than four months after the federal decision became final.

As to the procedural denial,[10] the County has authority under CEQA to disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the Project were approved, *as proposed.* 14 Cal. Code of Regs. § 15042; Cal. Pub. Res. Code § 21081.[11] The County exercised its authority and found that CEMEX failed to cooperate in substantiating that the action would not adversely affect the health, safety and welfare of persons residing in the surrounding area.[12] SUF No. 28. Had CEMEX agreed to a revised traffic analysis and to recirculate the FEIR for public review and comment, the CEMEX mine might be operational today. "An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of an EIR shall suspend applicable time

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[10] The procedural denial specifically leaves open review of future mining proposals. AR 20443.

[11] Certification of a Final EIR is only required prior to approval of a project, not a denial. 14 Cal. Code of Regs. § 15090. The Planning Commission denied the Permit in 2000, therefore the County Board had no duty to certify the EIR unless it intended to approve the Permit.

[12] Any inquiry into the motives of administrators in the context of a challenge to administrative action is strongly disfavored. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420, 91 S. Ct. 814, 825, 28 L. Ed. 2d 136 (1971).

requirements." 14 Cal. Code of Regs. §§ 15108, 15109; *Carmel Valley View, Ltd. v. Maggini*, 91 Cal. App. 3d 318.

b. The County's "Consideration" of Conditions Is Not Preempted

CEMEX's Second Claim for Relief, alleging that conditions imposed by the County that are inconsistent with the conditions set forth in the federal ROD are preempted, is without merit. CEMEX does not allege that the County ever imposed unreasonable conditions but merely that "County has given consideration to conditions that conflict with the ROD, the Federal Contracts, and the Materials Act of 1947...." SAC, 101:4-7. If, as CEMEX alleged, the County is preempted from even considering conditions that conflict with the federally approved Project, then the local review process is rendered meaningless. CEMEX's suggestion that the County is barred from considering conditions amounts to an argument that it wants a *pro forma* rubber stamp from the County. Similarly, the United States fails to allege that the County Board ever actually imposed any local land-use policies inconsistent with the Project, only that the County made "efforts to impose local land-use policies" and "entertained" housing projects near the mine. U.S. Complaint, 27:4-27:19. As noted above, the only "conditions" the County Board imposed which CEMEX found unacceptable is the recirculation of the FEIR concerning traffic impacts. These conditions amount to reasonable environmental regulation and have no connection to a "land-use policy."

B. CEMEX's Takings Claim and Claim That It Has Been Deprived Of Property Without Due Process Are Premature And Fail As a Matter of Law

CEMEX's Takings Claim fails as a matter of law for three reasons: (1) CEMEX's claim is premature, (2) CEMEX has no vested property interest in the sand and gravel, and (3) no taking can occur as a result of lawful government action. Moreover, because CEMEX's procedural due process claim concerns deprivation of the same property right alleged in its Takings claim, the due process claim is subsumed into the Takings claim and is also premature.

1. Fifth Amendment Takings Claim

CEMEX's Takings Claim is premature. The Supreme Court has held that if adequate State remedies exist for seeking just compensation, "the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." In *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-7, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985); see also, *Cassettari v. County of Nevada*, 824 F.2d 735, 737-8 (9th Cir. 1987). California law permits a property owner to bring an inverse condemnation action to obtain just compensation for an alleged taking of property. See Cal. Code Civ. P. § 1245.260. Under California Code of Civil Procedure section 1235.170, "'property' [for purposes of eminent domain and inverse condemnation] includes real and personal property and any interest therein." *Baldwin Park Redevelopment Agency v. Irving*, 156 Cal. App. 3d 428, 435 (1984); *McMahan's of Santa Monica*, 146 Cal. App. 3d 683, 700 (1983). In 1987, California recognized inverse condemnation claims based on regulatory takings. *First*

English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987).

CEMEX alleges that "Plaintiff has a protectible property interest in its Federal Contracts with the United States and the ROD, including all conditions, decisions and approvals relating thereto." SAC, 118: 21-23. CEMEX claims all beneficial use of its property interests were taken by the County. SAC, 118: 24-28. If the County did indeed deprive CEMEX of a property interest, without payment, just compensation can be obtained by using California's inverse condemnation procedures. Whether or not CEMEX has legitimate federal claims and is permitted to pursue its related state claims in this court, does not alter the conclusion that the Fifth Amendment Takings claim is premature. *See*, Court's July 29, 2002 Order, 15:21-25, citing *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 160-165,118 S. Ct. 523 (1997).

Not only is CEMEX's claim premature, but CEMEX's property interest in the sand and gravel has not yet vested. County and State approval is a *condition precedent* to CEMEX's rights under the contracts to extract sand and gravel. A *condition precedent* requires certain performance or a condition which must take place before a legal right can vest. *See, e.g., Wien Consolidated Airlines, Inc. v. C.I.R.*, 528 F.2d 735 (9th Cir. 1976). A right that has not as yet vested is not a property interest for purposes of a Fifth Amendment Takings claim. *Lynce v. Mathis*, 519 U.S. 433, 440, 117 S. Ct. 891, 895, 137 L. Ed. 2d 63 (1997). Although CEMEX may have certain rights under the contracts, i.e. as to price and tonnage, the right to extract sand and gravel is expressly subject to CEMEX's compliance with local rules and regulations. The Contracts expressly provide: "[t]itle to

materials sold hereunder shall pass to Purchaser only upon severance or extraction of and proper payment of such materials." SUF No. 3. If CEMEX is unable to obtain approval, the *force majeure* clause of the contract excuses CEMEX's performance. SUF Nos. 6 and 7. CEMEX has no vested property right in the sand and gravel and therefore no taking claim.

Cases cited by the Court in its July 29, 2002 Order are inapposite. *See, Madera Irrigation District v. Hancock*, 985 F.2d 1397, 1399 (9th Cir. 1992) [Court found that water district had a vested property right where contract did not contain any condition precedent to right to a "permanent water supply"] and see, *Barcellos and Wolfsen, Inc. v. Westlands Water District*, 899 F.2d 814 (9th Cir. 1990) [Court determined that sale of "excess lands" within 10 years was a *condition precedent* to the landowners rights to receive subsidized water after the 10 years expired. Landowners who failed to sell their excess lands had no contractual right to the subsidized water for more than 10 years, despite the fact that they were enjoined from selling their "excess land" during part of the 10 year period.] Finally, CEMEX has not been deprived of property as a result of unlawful government action. As discussed above, County's environmental review and conditional denial are lawful actions required under CEQA and SMARA, as mandated by federal law and the federal decisions.

2. CEMEX's Due Process Claim

When a plaintiff alleges that he was denied a property interest without due process, and the loss of that property interest is the same loss upon which the plaintiff's takings claim is based, the plaintiff must utilize the remedies applicable to the takings claim. "It is appropriate in this case to subsume

the more generalized Fourteenth Amendment due process protections within the more particularized protections of the 'Just Compensation Clause.'" *Millet v. Campbell County*, 945 F.2d 348, 352 (10th Cir. 1991); see, *Cassettari v. County of Nevada*, 824 F.2d 735, 738-739 (1987); and *Lake Nacimiento Ranch Co. v. San Luis Obispo County*, 841 F.2d 872, 879 (9th Cir. 1987). Accordingly, until a plaintiff has resorted to the condemnation procedures to recover compensation for the alleged taking, the procedural due process claim is not ripe because it is in essence based on the same deprivation. (*Id.*)

The procedural due process argument that CEMEX asserts here is that the County's implementation of environmental regulations deprived it of its contractual interests. The property interest supporting this due process claim is exactly the same one that CEMEX asserts has resulted in the taking of its property without just compensation in violation of the Fifth Amendment.[13] Under these circumstances, CEMEX must first obtain a final adverse decision with respect to the environmental review by the County, and then make use of the available inverse condemnation remedies, before its procedural due process claim may be considered ripe for determination. *Id.*

C. CEMEX's Claim That It Has Been Denied Equal Protection Fails As a Matter of Law

To state an equal protection claim, CEMEX must charge the County not only with deliberately acting against it, but also with singling it out for selective enforcement on an impermissible basis. *Arroyo Vista Partners v. County of Santa*

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[13] City incorporates by reference the arguments made in section III.B(1), above.

Barbara, 732 F.Supp. 1046, 1055, citing *Brady v. Town of Colchester*, 863 F.2d 205, 216 (2nd Cir. 1988). Because CEMEX does not fall within a suspect class, the County need only show that its actions were rationally related to a legitimate state interest. *New Orleans v. Dukes*, 427 U.S. 297, 303-304, 96 S. Ct. 2513, 2516-2517, 49 L. Ed. 2d 511 (1976).

CEMEX's lawsuit is against the "County of Los Angeles." Therefore, CEMEX must allege that the "County of Los Angeles," not individual board members, staffers or even the Board itself, deliberately acted against it by singling it out for selective enforcement. CEMEX has failed to allege that the County, i.e. the voting public, has taken any action against its interests. Instead, CEMEX alleges that the County Board "proposed conditions that have not been applied to other similar projects or applicants." SAC, 112:2-3. CEMEX further alleges that a single supervisor "disregarded the County-wide requirements for distribution of EIRs..." and that County staff imposed "arbitrary and discriminatory requirements and standards for the traffic analysis of impacts of CEMEX's Project." SAC, 113:11-24.

None of these allegations sufficiently state an Equal Protection claim against the County of Los Angeles. In *Arroyo Vista*, 732 F. Supp. 1046, plaintiffs brought an action against the entire Board of Supervisors and the County of Santa Barbara. The court found the equal protection challenge defective because plaintiffs failed to allege that the majority of the Board acted with suspect motives. Allegations against a single Board member were insufficient to implicate the Board. Similarly, CEMEX's allegations against the County Board for proposing conditions, and against County staff and an individual Board member are insufficient.

Moreover, there is no "similar project" to the Soledad Canyon Project. It is undisputed that the Project would be one of the largest, federal sand and gravel contracts permitted by the BLM. SUF 17. This Project is *per se* unique. CEMEX cannot, as a matter of law, establish that it was treated differently from similar applicants because none exist. Finally, the County Board's condition that the FEIR be recirculated concerning traffic issues is rationally related to the Board's authority as lead agency under CEQA.

D. Dismissal Of Plaintiffs' Federal Claims Requires Dismissal of CEMEX's Pendent State Claims

CEMEX's state claims of traditional mandate, administrative mandamus and inverse condemnation are predicated on pendent jurisdiction. If Plaintiffs' federal preemption claims and constitutional claims brought under 42 U.S.C. § 1983 are without merit and dismissed, the Court is without jurisdiction over the pendent state claims. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1996). The United States is not a party to these pendent state claims. As such, CEMEX's Sixth, Eighth and Ninth claims must be dismissed.

E. Pursuant to the "*Younger*" Abstention Doctrine the District Court Must Abstain From Taking Jurisdiction and Dismiss the Action

In *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L. Ed. 2d 669 (1971) the United States Supreme Court held that a federal court may not enjoin pending state court criminal proceedings. *See, Mission Oaks Mobile Home Park v. City of*

Hollister, 788 F.Supp. 1117, 1120 (N.D.Cal.1992). The principles of *Younger* have been expanded to apply to pending state court civil actions between private litigants, and state administrative proceedings that are adjudicatory in nature. *See, Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F. 2d at 1356-1357; *see also, Green v. City of Tucson*, 255 F. 3d 1086, 1095 (9th Cir. 2001); *Mission Oaks Mobile Home Park v. City of Hollister*, 768 F. Supp. at 1120; *Grand Metropolitan PLC v. Pillsbury Co.*, 702 F. Supp. 236, 238 (D. Ariz.1988) and *Communications Telesystems v. California Public*, 14 F. Supp. 2d 1165, 1167 (N.D. Cal.1998).

The Supreme Court has established a three-part test for determining whether abstention in favor of a state proceeding is appropriate in a given situation. Abstention is proper if: (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions. *Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F.2d at 1357-1358; *citing Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 ,102 S.Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982). The Ninth Circuit Court of Appeals has supplemented this three-part test with the additional requirement that the relief sought in the federal litigation must actually "interfere" with the ongoing state proceedings. *Green v. City of Tucson*, 255 F.3d at 1098.

Abstention is the exception, not the rule. *Id.* at 1089. However, "[w]hen a case falls within the proscription of *Younger*, a district court must dismiss the federal action." *Communications Telesystems v. California Public*, 14 F.Supp. 2d at 1168. "Where a case is properly within [the *Younger*] category of cases, there is no discretion to grant injunctive

relief." *Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F.2d at 1356. Abstention is inappropriate if a challenged state action "clearly conflicts with preemptive federal law." *Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F.2d at 1361. As outlined above, there is no preemption.

1. The Relief Sought by CEMEX Interfered With State Proceedings

A threshold condition for abstention under *Younger* is actual "interference" with ongoing state proceedings that are judicial in nature. *Green v. City of Tucson*, 225 F.3d at 1096. The relief sought in the federal action must in some manner directly "interfere" in the state proceedings by either truncating or terminating the proceedings. *Id.* at 1097-98. The relief CEMEX seeks in its federal lawsuit will either truncate or terminate the County's adjudicatory proceedings. In its federal complaint, CEMEX is seeking two alternative forms of relief. CEMEX is seeking in the first place to have the District Court preempt *(i.e.*, terminate) the County's SMARA and CEQA proceedings. SAC, Prayer for Relief. Alternatively, CEMEX is asking the Court to enjoin the County from conducting further environmental analyses under CEQA and order the County to immediately issue CEMEX a surface mining permit under SMARA. *Id.* CEMEX's relief would result in a substantial truncation of the SMARA and CEQA proceedings. The threshold condition for abstention under *Younger* has, therefore, been met.

2. The State Proceedings are Ongoing

The first part of the three-part test is that the state proceedings must be ongoing. "Abstention is required only

when the state proceedings have been initiated 'before any proceedings of substance on the merits have taken place in federal court.'" *Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F.2d at 1358. "[T]he 'critical question is not whether the state proceedings are still ongoing, but whether the state proceedings were underway before the initiation of the federal proceedings.'" *Mission Oaks Mobile Home Park v. City of Hollister*, 788 F. Supp. at 1121; citing *Beltran v. California*, 871 F.2d 777, 782 (9th Cir.1988).

According to its complaint, when CEMEX filed its federal lawsuit, a hearing was already scheduled before the Board of Supervisors for February 26, 2002 to consider CEMEX's appeal. SAC: 58:24-59:1. It is clear from CEMEX's federal complaint that the state proceedings under SMARA were ongoing when the federal litigation was initiated. The fact that the County subsequently denied CEMEX's permit application has no relevance. "Where *Younger* abstention is appropriate, a district court cannot refuse to abstain, retain jurisdiction over the action, and render a decision on the merits after state proceedings have ended." *Beltran v. State of California*, 871 F.2d at 782. "*Younger* abstention requires ***dismissal*** of the federal action." *Id.* (emphasis in original).

3. The State Has an Important Interest in the SMARA and CEQA Process

"*Younger* abstention is appropriate only where important state interests would be affected by the federal action." *Fresh International Corp. v. Agriculture Labor Relations Board*, 805 F.2d at 1358. Important state interests can include interests in the elimination of prohibited sex discrimination, *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718, 2723, 91 L. Ed. 2d

512, *Williams v. Red Bank Board of Education,* 662 F.2d 1008, 1018 (3d Cir.1981)(abstaining in deference to teacher tenure termination proceedings), education, police disciplinary proceedings, *McDonald v. Metro-North Commuter Railroad Division,* 565 F. Supp. 37, 40 (S.D.N.Y.1983)(state interest in police officer disciplinary proceedings for making false statements), interests for purposes of abstention in the control and transfer of liquor licenses, *Grand Metropolitan PLC v. Pillsbury Co.*, 702 F. Supp. at 238, and the regulation of mobile home rents. *Mission Oaks Mobile Home Park v. City of Hollister*, 788 F. Supp. at 1121-22. The State of California has an important interest in protecting the health, safety and welfare of its citizens. Ensuring that the objectives of SMARA and CEQA (pg. 10 f.n. 4-5) above, are fulfilled is crucial to this interest.[14]

4. CEMEX Can Raise its Federal Claims in the State Proceedings

A state appellate court review of an agency decision satisfies *Younger*'s third prong. *Beltran v. State of California*, 871 F.2d at 783. "[I]t is sufficient . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding." *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. at 629, 106 S.Ct. at 2724. The California Appellate Courts provide a full and fair opportunity for a litigant to bring federal claims. *Mission Oaks Mobile Home Park v. City of Hollister*, 788 F.Supp. at 1122.

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[14] *See, Kim-Stan, Inc. v. Department of Waste Management*, 732 F.Supp.646, 652 (E.D.Va.1990)(holding that, for purposes of abstention under *Younger*, the State of Virginia has a vital interest in the health, safety and welfare of its citizens and that protecting the waters from environmental hazards was crucial to that interest).

CEMEX brought its federal claims of preemption, due process, and equal protection before the County of Los Angeles. Even if the County cannot properly rule on these claims, the issues have been preserved and can be asserted in any state court review of the County's decision. The final part of the three-part test for abstention has, therefore, been satisfied.

IV. CONCLUSION

Based on the foregoing, City respectfully requests that its Motion for Summary Judgment be granted in full. In the alternative, City requests that summary adjudication be granted as to each and every claim for relief.

DATED: April 2nd, 2004

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of CITY OF SANTA CLARITA'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT / ADJUDICATION to be served via overnight mail this 2nd day of April, 2004, to the following:

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